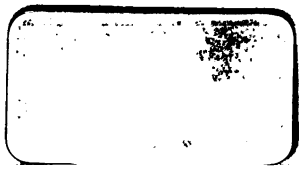

THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

BY

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INDEX, 1ST PART.

Judicature, 16 Victoria, chaps. cxciv. and cxcv.

1ST PART.

ERRATUM.

P. 3, line 29, read "purported" instead of "preported."

THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

From what occurred in the Court of Appeals during the argument of the case of Dease and Mackintosh, in the last Term, we are induced to make some remarks upon the forms prescribed by Law for the making of entries in the Registers of Baptisms, Marriages and Burials kept by the Priests and Ministers of the various parishes and congregations in Lower Canada. The leading Act upon the subject is the 35 George III., chap. 4, page 611 Revised Statutes. Its preamble is suggestive of the value of such registers, "Whereas the keeping of uniform and authentic registers of the baptisms, marriages and burials in this Province will tend to secure the peace of families, and ascertain various civil rights of His Majesty's subjects therein."

The Act enacts that in each Parish Church of the Roman Catholic Communion, and also in each of the Protestant Churches and Congregations within the Province, there shall be kept by the rector, curate, vicar, or other priest or minister, doing the parochial duty thereof, two registers of the same tenor, each of which shall be reputed authentic and shall be equally considered as legal evidence in all Courts of Justice, in each of which the said rector, curate, vicar, or other priest or minister doing the parochial or clerical duty of such parish or Protestant Church or Congregation, shall be held to enregister regularly and successively all baptisms, marriages and burials so soon as the same shall have been by them performed.

It enacts that previous to any entry in such registers a Justice of the Court of King's Bench, or a Judge, shall number and *parapher* each leaf thereof, "and such registers so numbered and authenticated or "*paraphé*, and which shall be kept in manner and form as hereinafter "mentioned shall be legal evidence of such baptisms, marriages or "burials."

A Judge need not now *parapher* each leaf of such registers; the 2 Vic., chap. 4, having made a new regulation on the subject, (see p. 616 of the Revised Statutes.) Section 3 of the 35 Geo. III., prescribes the form for entries of baptisms. Section 4 regulates the entries of marriages, and Section 5 of burials. Too much attention cannot be given to the requirements of these three sections. We transcribe Section 4.

"And be it further enacted, that in the entries of marriages, in the registers aforesaid, shall be inserted in words the day, month, and year on which the marriage shall have been celebrated, with the names,

quality or occupation, and places of abode of the contracting parties, whether they are of age or minors, and whether married after publications of banns or by dispensation, or licence, and whether with the consent of their fathers, mothers, tutors or curators,—if any they have in the country; also the names of two or more discreet persons present at the marriage, and who, if relations of the husband and wife, or either of them, shall declare on what side and in what degree they are related; and such entries shall be signed in both registers by the person celebrating the marriage, by the contracting parties, and by the said two discreet persons at least—and if any of them cannot or know not how to sign his or her name mention shall be made thereof in the said entries."

By Section 6 it is ordered that in six weeks at farthest after the expiration of each year each rector, priest, or minister, shall deliver to the Clerk in the Clerk's office of the Civil Court of King's Bench, or of the Provincial Court of the District, one of the registers; the other one shall remain with such priest, rector or minister to be by him preserved and left to his successor in office or clerical duty; "and it shall be at the option of parties interested to demand copies of the said entries from either of the registers aforesaid; and the Clerks of the said Courts, and the rectors, curates, vicars and other priests in possession of such registers, are required to grant the same certified under their respective signatures, which shall be received as evidence in all Courts of Justice."

By Section 7 it is enacted that every rector, priest or minister who shall neglect to comply with the true intent of the Act, either in the form of the registers of the entries therein to be made, or in the delivery of the same into the Clerk's office aforesaid, shall pay for each neglect not less than two nor more than £20, currency, without prejudice to the suffering parties' rights to all costs, damages and interest. These penalties may be recovered by action of debt in any Court of Record by any person suing for the same, one half of the adjuged penalty to go the Receiver General, the other half to the prosecutor, who shall also get full costs.

The advantages of the 35 George III. have been, by latter Acts, conferred upon different denominations of Protestant expresly; for instance, upon the Baptists in Montreal, and upon the various Congregational Societies. The Jews also have had conferred upon their ministers rights to keep such registers.

Notwithstanding that a printed copy of the 35 George III., was transmitted to each rector, curate, priest, and minister, and to the Churchwardens of every parish and Protestant Church in the Province, to be by each of them preserved and left to their successors respectively, it is lamentable to see the ignorance or neglect manifested of this law by the Protestant Clergy generally. We state that as a general rule the copies of entries from the registers furnished by the Protestant Clergy are informal, and so much so that they ought not to be "received as evidence" in any Court of Justice. Where these

copies of entries, or extracts as they are commonly called, are formal as copies, and are properly certified it very often happens that they are valueless owing to informalities in the original entries. We have seen a dozen extracts of marriage of minors in none of which was it mentioned "whether they were married with the consent of their fathers, mothers, tutors, or curators," and in none of which was it mentioned "on what side, or in what degree, the two or more discreet persons present at the marriage," (signing the entries as witnesses and as relatives of one, or other, of the parties) "were related to the husband, or wife." It is quite clear that for all of these omissions prosecutions might have been brought successfully. The law is positive.

Dease and Macintosh, before referred to, was an appeal from a judgment of the Superior Court, Montreal. That judgment was rendered in favor of Macintosh, as a minor emancipated by marriage, assisted by John Norton, as his tutor *adhoc*, against *Dease*, as executor of the Will of the late William Mackintosh, ordering Dease to render an account, and also ousting him from the executorship for malfeasance. In appeal *Dease* was confident of obtaining a reversal of the judgment of the Court below chiefly because, (as he said,) the marriage of the minor *Macintosh*, and his consequent emancipation, had not been proved. The evidence of this marriage was an extract of marriage certified by a person calling himself "Incumbent" of Lachine. Both parties married were minors; yet the register shewed no entry of the marriage being with or without "the consent of fathers, mothers, tutors or curators." It was contended that if faith was to be given to registers it was to registers "kept in manner and form" ordered, and to none others; also that the certificate ought to have proported to have been issued or granted by the rector, curate, priest or minister "in possession of the original register." It merely proported to be issued by the "Incumbent of Lachine."

No decision has been rendered upon the appeal referred to; but, however favorable it may be to the Respondent, it must be admitted that it is not at all pleasant to have questions raised such as raised upon that extract, or certificate. There is no doubt that the Incumbent of Lachine has incurred the penalty of 35 Geo. III., owing to the defective form of the entry of Macintosh's marriage in the register. One of the learned Judges of the Court of Appeals expressed himself to the effect that the loose and careless way in which a great many of the Protestant Clergy kept their registers amounted to a crying evil, and that it was desirable that some were punished for their neglects. Certainly we agree with him. It is dreadful to see the irregularities in many of the registers caused by the careless and negligent discharge (or rather want of discharge) of their duties by ministers. How many "enregister regularly and successively all baptisms, marriages and "burials so soon as the same shall have been by them performed?" We venture to say that as a general rule such enregistrations are not so soon made. Hence such irregularities as must occur upon the sudden death of a minister of a parish, or congregation. We know a

populous congregation in Montreal which, from such a bad practice as we mention to prevail, is deprived of the benefit of the evidence which the register might afford of births, marriages and burials for upwards of six months of the year 1847! We know of *many* registers in which blanks exist for the signature of one or other of the parties contracting marriage, one or the other of the parents of a child baptised, one, or all, of the witnesses to a burial. This ought not to be, and a heavy responsibility rests upon those who make these irregularities.

It is impossible to foresee all the evil consequence that may flow from them. In the hope of drawing the attention of the proper parties to the subject, we have hastily thrown together these remarks; had time afforded we could have made them longer; *query* would they have therefore been more intelligible?

Nov. 1853.

***Since the above was written, Judgment has been rendered confirming the Judgment of the Superior Court in Macintosh and Dease; perhaps because by his pleas Dease had admitted the marriage, though he urged that it was null. January, 1854.—*Communicated.*

QUELQUES RÉFLEXIONS SUR LE TITRE DES SEIGNEURS DE FIEF.

L'objet des quelques lignes qui suivent est d'examiner, de discuter les propositions nouvellement émises sur le titre des seigneurs de fiefs. M. l'avocat des seigneurs dans son discours prononcé à la barre de la Chambre d'Assemblée, lors de la dernière session a pris pour base de ses raisonnemens le droit sacré de propriété. Il a établi que les seigneurs avaient des titres de propriété incontestables. Il s'appuya sur tous les auteurs qui ont traité des fiefs, sur les décisions des tribunaux. Il n'était pas difficile de citer des autorités, de s'appuyer sur des principes universellement reconnus par tous ceux qui ont fait quelqu'étude sur ce sujet. Dans tous les auteurs qui ont traité des fiefs le mot de propriété se trouve partout suivi de l'hérédité du droit de disposer, etc.

Ces propositions unef ois admises rendaient absurde et immoral le système d'abolition.

La chose fut bien comprise et il n'était pas difficile de s'appercevoir qu'en reconnaissant ces principes on donnait gain de cause aux seigneurs. Les uns feignirent d'abord d'avoir des doutes. Quelques autres témoignèrent de la surprise a la vue de cette idée d'un titre d'un droit de propriété. Tout le monde sentait que l'avocat des seigneurs était retranché derrière une forteresse qui résisterait a toute attaque tant qu'on ne saperait pas les fondemens. Pour rassurer les esprits de ceux qui tout en désirant le réglement de la question seigneuriale ne voulaient pas violer de justes droits, il devint nécessaire d'attaquer et de renverser la proposition émise de la part des seigneurs

et de prouver que ce titre ou droit de propriété n'existait pas. Voici le moyen auquel l'on a cru devoir recourir. L'on a dit l'on a osé dire: " Les seigneurs de fiefs ne sont pas des propriétaires." Ils ne sont que des fidei-commissaires!

Tout le monde se rappelle ce que dit M. Hincks le premier jour des débats en mai dernier. Voici les paroles de cet homme qui s'exprime en jurisconsulte, car sans doute il se considère bon juge en pareille matière.

(Voir le *Pays* du 18 mai.)

" La chambre a eu l'occasion d'entendre un discours habile d'un " savant avocat qui a affirmé en la manière la plus positive que les " seigneurs possèdent leurs seigneuries avec un droit de propriété, " aussi absolu que les propriétaires sous d'autres tenures. Tout ce que " je puis dire, c'est que le savant avocat a été bien loin de me convain- " cre. (Hear, Hear!) et je crois encore que les seigneurs ne sont " point propriétaires absolus du sol de leurs seigneuries, mais simple- " ment fidei-commissaires *(trustees)*."

Eh bien! Si l'on ne peut respecter l'opinion de M. Hincks comme jurisconsulte on peut au moins reconnaître là le sentiment d'un homme d'esprit, qui voit que tout gît dans la discussion de cette question de la nature du droit du seigneur. Est-ce propriété ou fidei-commis? Et c'est là que le savant avocat a l'avantage sur lui. Oui, monsieur Hincks, si le seigneur n'a qu'un fidei-commis on peut l'attaquer avec bien plus de plausibilité et même quelque avantage. Car qu'est-ce qu'un fidei-commissaire ou *trustee*, pour résister au pouvoir? Mais il en est autrement du propriétaire. Le pouvoir est sans force, à moins qu'il ne parle de spoliation et la pudeur s'y oppose.

Le propriétaire n'a à craindre que l'action des tribunaux ou son titre sera mis en question, s'il est nul, il sera déclaré tel, s'il est résoluble en vertu d'une clause résolutoire ou autrement, il sera rescindé par un jugement. Le pouvoir Législatif n'a d'autre droit que de le forcer à vendre dans l'intérêt public en lui payant la juste valeur.

M. Dunkin avait donc bien raison de s'appuyer sur le droit de propriété de ses clients. Il a senti que c'était là le boulevard qui les protégeait, et l'accusation d'avoir été trop loin, portée contre lui donne beaucoup a penser que ses auteurs ne connaissaient aucunement la question.

Ce n'est pas que l'on doive craindre que le titre des seigneurs tel qu'on le nomme ne les protège pas contre la spoliation, la moralité publique les protège, mais l'on se fait une morale politique, et sans admettre qu'il s'agisse de spoliation, l'on dépouille le propriétaire sous ce prétexte des petits esprits; j'oserais dire des ignorans, que les seigneurs ne sont que des fidei-commissaires. . . . . Qu'on recourre donc à la définition du mot, qu'on cite l'auteur dont l'autorité justifierait cette idée absurde autant qu'elle est injuste et immorale. Où se trouve-t-il?

Mais j'entends quelqu'un dire: " Un droit d'usufruit est aussi un droit de propriété. Pourquoi cette distinction!"

Il y a de la mauvaise foi dans cette réflexion. Car l'on sait, quelle espèce de propriété est l'usufruit, qui n'est que le droit de jouir d'une chose dont un autre a la propriété et dont il ne peut alterer la substance. Et le fidei-commis c'est un usufruit rien de plus. Mais l'usufruitier que la loi dépouillerait de son bien par une expropriation forcée, mais légale sera-t-il indemnisé comme le propriétaire? Oh! la différence est grande..... Et c'est la principalement qu'il y a un grand intérêt chez les seigneurs qu'on ne les considère pas comme des usufruitiers quand il sera question de les indemniser en les expropriant par une commutation législative.

Aujourd'hui le nombre de ceux qui ne voulaient qu'une mince indemnité ou plutôt la ruine de cette classe, est petit. Leur tour est passé. Les seigneurs n'ont plus affaire qu'à des personnes qui veulent une commutation des droits seigneuriaux, équitable et juste. Du moins ceux qui veulent l'injustice sentent qu'ils doivent renoncer à toute espérance de cette spoliation. Ce qu'il convient de faire maintenant c'est d'entrer en négociation à ce sujet. Le devoir des Seigneurs, et des Censitaires est de faire etablir et fixer suivant les régles ordinaires le montant de l'indemnité a payer.

Ce sera une législation toute morale puisqu'elle respectera les droits acquis. Il ne s'agira plus que d'avoir recours au droit civil toujours fondé sur l'équité pour connaître les régles de l'expropriation forcée dans l'intérêt public pour l'estimation et le paiement de l'indemnité au propriétaire. Car la commutation que l'on demande n'est autre chose que cette expropriation. Elle est dans les principes, suivons donc ces principes de loi et d'équité.

Tous ceux qui veulent se faire une idée juste du titre du seigneur poivent considérer la nature de ce contrat qu'on appelle *contrat de fief* ou infeodation.

En Canada il est intervenu entre le souverain et ceux qu'il a voulu gratifier, c'est disent certains auteurs une donation onéreuse (souvent rémunération.)

Voir la Définition. 1. Hervey p. 372, 375 et 376. Concession de la pleine propriété: "D'abord (dit l'auteur) les fiefs ne furent pas "considérés comme une propriété parfaite, mais quand ils sont devenus "héréditaires et qu'ils ont absolument tombé dans le patrimoine du "vassal, on a dû prendre d'autres idées. Quand je puis vendre, donner, "aliéner de toutes les manières, détériorer une chose, en un mot, en "disposer à mon gré, j'ai bien le *jus utendi et abutendi*, dans lequel "consiste la vraie propriété, etc."

Voir à la p. 388 du contrat et de ses charges et conditions. Réglé comme les autres contrats par le droit romain.

Le titre du seigneur n'est autre chose que la concession royale qui lie la couronne comme le concessionaire. Contrat *synnalagmatique*.

Et qu'on ne dise pas que le roi de France par cela qu'il était roi absolu, pouvait ajouter aux obligations de ses vassaux, contenues dans

le titre de concession. La chose n'est pas soutenable. Alors que deviennent en principe tous ces édits du roi de France rendus postérieurement aux concessions de fiefs? Qu'on put les exécuter sous un gouvernement arbitraire même à l'aide des tribunaux, à la bonne heure mais en demander l'exécution depuis que le pays est sous la domination de l'Angleterre, la chose est plus qu'absurde. Tous ces édits et ordonnances, ces quelques décisions des cours par des arrêts que l'on cite ont dès lors dû cesser d'avoir aucun effet, aussi depuis un siècle ils sont *lettre morte*. C'est le sens commun qui le dit à tous ceux qui ne sont pas aveuglés par les préjugés.

Maintenant l'on semble en général abandonner ces prétentions outrées et reconnaître (et il le faut bien) que le seigneur a un titre, que ce titre doit être respecté comme celui de tous les propriétaires de bien fonds, et que si l'on veut l'exproprier par une commutation forcée dans l'intérêt public, il faut lui en payer la valeur. C'est en venir où l'on aurait du commencer. Maintenant pour estimer la seigneurie ou les droits seigneuriaux, comment éviter de voir dans le seigneur un propriétaire de bien fonds, qu'il possède par un titre absolu permanent, efficace suivant sa nature et avec des droits et priviléges reconnus par le texte de la loi, par la jurisprudence uniforme et d'après un usage suivi depuis un siècle et plus. N'est-ce donc rien qu'un tel usage? L'usage fait la loi et établit la jurisprudence, c'est ce que tout le monde sait. Qu'on ouvre le premier livre de droit, l'on y trouve ce principe. Il n'y a donc pas de droit mieux reconnus que ceux qui le sont par un long usage, approuvé par les décisions des tribunaux, c'est là dans le fait ce qui les établit. C'en est la loi déclaratoire.

Il est si simple de considérer la question seigneuriale sous ce point de vue, qu'il doit paraître étonnant qu'on ait pu quelque temps s'en éloigner en adoptant des idées subversives du droit de propriété.

L'on ne peut autrement rendre compte de cette aberration qu'en en trouvent la source dans cette fausse idée que s'étaient faite certaines personnes, d'un *fidei-commis* que M. Hincks le jurisconsulte appelle *trust*. Il y a réellement une illusion bien grande à voir un fidei-commis, dans un contrat d'inféodation *en toute* propriété, sans condition autres que celles qui y sont exprimées et en l'absence de clauses résolutoires. Où est donc le fidei-commis? en faveur de qui existerait-il s'il en eut été question dans la concession du fief? En faveur du peuple. . . . dira-t-on. Quoi! Les rois de France avaient établi un fidei-commis en faveur de la population, et où trouve-t-on cela? Mais c'était sous-entendu. . . . . cela n'est pas tout à fait conforme à la loi des contrats, mais n'importe, chaque sujet du roi de France pouvait se prévaloir de ce fidei-commis tacite et puis après la conquête il changeait sans doute de nom, il était appellé *trust* en faveur sans doute des sujets britanniques; peut-être aussi des étrangers. Qui sait?

Il est impossible de ne pas se laisser aller au badinage. Mais le badinage n'est guère de mise, quand il s'agit du droit sacré de propriété. C'est sérieusement qu'on doit en traiter. Il faut avoir recours à des principes de droit et non pas à des suppositions de fantaisie com-

me sont les conventions tacites ou sous-entendues, surtout lorsqu'il s'agit d'un titre qui depuis un siècle a été interprété suivant sa teneur et suivant la loi des contrats, j'ose dire, la loi du pays.

Si l'on veut ne s'occuper plus comme cela semble aujourd'hui être la résolution de la partie pensante et raisonnable dans notre société qui a vraiment intention d'opérer un bien, sans spolier qui que ce soit, si, dis-je, il n'est plus question que de racheter les droits seigneuriaux pour abolir la tenure voyons de suite a fixer l'indemnité à donner à celui que l'on contraint de vendre (au seigneur) en lui payant la valeur de son bien. Puis, l'on parlera d'une commutation, c'est-à-dire d'un moyen da payer cette indemnité. Les seigneurs s'y prêteront, tout peut se faire à l'amiable.

ANONYME.

(A continuer.)

(From London Legal Observer.)

Court of Criminal Appeal.

Regina v. *Reason*. Nov. 12, 1853.

INDICTMENT FOR STEALING POST-OFFICE LETTER.—"OFFICER."

A letter-carrier, on the request of a post-master, assisted him gratuitously in sorting letters, and stole a letter with 10s. *in it.* Held, *that he had been properly convicted under the 7 Wm. 4, and, 1 Vict. c. 36, s. 26, as he was an "Officer" within the interpretation clause.*

In this indictment against the prisoner as a person employed under the Post-office, for stealing a letter containing the sum of 10s., it appeared that the prisoner was employed to carry the letters in a sealed bag to the post-master at Tywach, and that he had committed the offence in question while sorting letters on being asked by the post-master. On the trial, at the last Glamorgan assizes, the prisoner was found guilty, subject to this case reserved by *Platt*, B.

Giffard for the prisoner, on the ground the prisoner was performing a gratuitous service, and was not therefore within the 7 Wm. 4 and, 1 Viet. c. 36, s. 26.

The *Court* said, that according to the interpretation clause* in the Act, the prisoner was a person employed under the Post-office, and the conviction was confirmed.

* Which extends the word "officer" to any "person employed in any business of the Post-office, whether employed by the Post-master General, or by any person under him, or on behalf of the Post-office.

Regina v. *Vodden.* Nov. 12, 1853.

CONVICTION AFTER DISCHARGE UNDER MISTAKE AS TO VERDICT.—REGULARITY OF.

A prisoner was discharged from custody on the Clerk understanding the verdict of the jury to be "Not Guilty," but on the mistake being discovered, he was taken into custody again and sentenced. The conviction was affirmed.

On this trial for felony, it appeared that the prisoner had been discharged from custody, on the jury being understood by the Clerk of the Court to deliver a verdict of "Not Guilty," but that he had been taken again into custody on its being discovered that the jury had given an unanimous verdict of "Guilty," and sentenced to two months imprisonment. The question was whether the Court had rightly allowed the entry of the verdict to be amended.

Giffard for the prisoner, on the ground the Clerk's entry of the verdict was matter of record and could not be altered.

The *Court* said, it was clearly a mistake and could be amended, and the conviction was accordingly affirmed.

Regina v. *Snelling.* Nov. 12, 1853.

FORGED ORDER FOR PAYMENT OF MONEY.—OMISSION OF PAYEES NAME,

A prisoner was convicted under the 11 *Geo.* 4 *and Wm.* 4, *c.* 66, *s.* 3, *for uttering the following order for payment of money:—"Hotton, March* 31. *Sirs,—Please pay to beariss, Mrs. Smart, the sum of eighth hundred & 50,4l ten shillngs for me. James Rumsey."* Held, *confirming the conviction, that the omission to address the order was immaterial, as it appeared in the evidence the word "Sirs" was intended by the prisoner to mean the bankers to whom it was presented.*

This was a question reserved under the 11 & 12 Vict., c. 78, s. 1. It appeared that the prisoner had been indicted for uttering the following forged order for payment of money:—"Hotton, March 31. Sirs,—Please to pay beariss, Mrs. Smart, the sum of eighth hundred & 50,4*l* ten shillings for me. James Rumsey;" and it was directed on the outside "Mrs. Smart." On the trial, at the East Suffolk assizes, before *Jervis*, L. C. J., it was objected, that it did not amount to an order for the payment of money under the 11 Geo. 4, and 1 Wm. 4, c. 66, s. 3, not being addressed to the parties to pay it.

Darent for the prisoner, cited *Rex* v. *Clinch*, 1 Leach, 540: *Worlledge* for the prosecution.

The *Court* said, that as there was evidence to show the word "Sirs" was intended by the prisoner to mean the bankers to whom the order had been presented, the omission of its being addressed to them would not prevent it from being an order for the payment of money, and the conviction must be affirmed.*

Regina v. *Stone*. Nov. 19, 1853.

PERJURY ASSIGNED ON AFFIDAVIT IN ADMIRALTY COURT SWORN BEFORE MASTER-EXTRA, IN CHANCERY.—JURISDICTION.

Held, *that a Master-extra, in Chancery has not such jurisdiction to take affidavits in the Court of Admiralty as to support an indictment for perjury thereon, and a conviction was reserved.*

This was a point reserved for the opinion of this Court, on an indictment for wilful and corrupt perjury in an affidavit in the Court of Admiralty, in a salvage case. It appeared on the trial before *Erle*, J., at the last York assizes, that the affidavit was sworn before a Master-extra in Chancery, and that it was the practice of the Court of Admiralty to receive affidavits so sworn. The Defendant was convicted, subject to this point reserved.

Cross for the Defendant.

F. Perronet Thompson and *W. Digby Seymour*, in support of the conviction.

The *Court* said, that a Master-extra had no authority to administer the oath in the Admiralty Court, and that the fact of such affidavits being acted on in that Court did not confer the authority. Although, therefore, the offence might amount to a misdemeanor for attempting to impose on the Admiralty Court, it was not perjury, and the conviction was accordingly reversed.

Regina v. *Bailey*. Nov. 19, 1853.

INDICTMENT FOR POSSESSION OF HOUSE-BREAKING IMPLEMENTS.—EVIDENCE OF INTENTION TO COMMIT FELONY.

A prisoner was indicted under the 14 *&* 15 *Vict. c.* 19, *of having been found at* 12 *o'clock at night with implements of house-breaking in his possession without lawful excuse. There was no evidence of an intention to commit a felony. The conviction was confirmed.*

It appeared that the prisoner had been indicted under the 14 & 15 Vict. c. 19, s. 1,† of having been found at 12 o'clock at night with cer-

* And see *Regina* v. *Rogers*, 9 Car. and P. 41.

† Which enacts that "if any person shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person), any" "implement of house-breaking" "shall be guilty of a misdemeanor."

tain implements of house-breaking in his possession, without lawful excuse. On the trial, at the Middlesex Sessions, in October last, the prisoner was found guilty of the possession, but the jury found there was no evidence of an intent to commit a felony, whereupon the point was reserved, whether the conviction was valid.

Hudleston for the prosecution.

The *Court* said, the conviction must be confirmed.

Regina v. *Garret*. Nov. 26, 1853.

INDICTMENT FOR OBTAINING MONEY UNDER FALSE PRETENCES.

The prisoner had altered a letter of credit for 210l. on the Union Bank of London into 5,210l., and had obtained in St. Petersburg 1,200l., giving a cheque for such sum on the English bank to the firm at St. Petersburg, who presented the cheque, which was dishonoured. Held, *reversing a conviction that the prisoner could not be indicted for attempting to obtain moneys under false pretences under 7 & 8 Geo. 4, c. 29, s. 53.*

It appeared on this indictment for attempting to obtain moneys under false pretences, that the prisoner had obtained a circular letter of credit from Messrs. Duncan & Co., of New York, for 210*l.*, on their correspondents, the Union Bank of London, and that he had altered the sum to 5,210*l.* The prisoner had obtained certain sums of money from Messrs. Wilson & Co., at St. Petersburg, and had given them a cheque for 1,200*l.* on the Union Bank, but which was dishonoured on presentation, and on the prisoner's coming to this country, he was indicted in respect of such cheque. On the trial, before *Parke*, B., the jury returned a verdict of guilty, subject to this point reserved.

Byles, S. L., and *Robinson*, for the prisoner, citing the 7 & 8 Geo. 4, c. 29, s. 63,* and *Rex v. Wavell*, 1 Mood, 224.

Huddleston in support of the conviction.

The *Court* said, even if the cheque had been duly honoured, the prisoner could not have been indicted for obtaining money under false pretences, as the obtaining within the meaning of the Statute contemplated an obtaining according to the wishes or in order to gain some advantage. But in the present case the prisoner had obtained his object on receiving the money in St. Petersburg, and no advantage could arise to him from the cheque being honoured, but on the contrary, it was more to his advantage if it had been destroyed. Although, therefore, there had been a gross fraud, there was no obtaining of money under false pretences within the Statute, and the conviction must be reversed.

* Which is follows:—"Whereas a failure of justice frequently arises from the subtle distinction between larceny and fraud; for remedy thereof, be it enacted, that if any person shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor."

Regina v. *Sleeman*. Nov. 26, 1853.

CONFESSION.—ADMISSION IN EVIDENCE.

Circumstances under which the confession of a prisoner charged with arson, was admitted in evidence on an indictment for such offence.

On this indictment for arson, before *Martin*, B., evidence was received of the prisoner's confession, which had been given upon the person having charge of her saying, "Don't run yourself into more sin, but tell the truth." The prisoner had previously denied her guilt on the witness expressing her regret at her situation and inquiring whither she were guilty or not.

The *Court* said, the evidence was admissible, as no threat or inducement had been held out, and confirmed the conviction.

Regina v. *Luckhurst*. Nov. 26, 1853,

INDICTMENT, INADMISSIBILITY OF EVIDENCE OF CONFESSION MADE UNDER THREAT.

Held, *that the confession of a prisoner was inadmissable in consequence of the witness saying "If you don't tell me, I will give you in charge to the police till you do tell me;" and the conviction was quashed.*

On this indictment, before *Cresswell*, J., at the last Maidstone assizes, it appeared that evidence had been received of the prisoner's confession to one Willard, who had gone to the prisoner and said, "If you don't tell me, I will give you in charge to the police till you do tell me." The question as to the admissibility of the evidence had been reserved on the prisoner being found guilty.

The *Court* said, that as the confession was made under a threat it could not be received; and the conviction was accordingly quashed.

THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

LA PEINE DE MORT.

Au dernier terme de la Cour du Banc de la Reine, siégeant en matière criminelle à Québec, F. X. Julien fut convaincu de meurtre sur la personne de son beau-père, et condamné a être pendu le dix-sept du courant.

Une Requête signée par des milliers de citoyens, demandant la commutation de la peine capitale, a été présentée à Son Excellence l'Administrateur du Gouvernement.

Le trois du courant une proclamation de Son Excellence annonce que la sentence du condamné est commuée, à un emprisonnement perpétuel au pénitentiaire.

Tous les Journaux Français et la majorité de la presse Anglaise du Bas-Canada, d'accord en cela avec l'opinion presqu'unanime de notre population, ont vivement applaudi à l'Acte de clémence que le Gouvernement vient d'exercer, et se sont unis pour exprimer à Son Excellence les sentiments bien mérités de leur reconnaissance. Pour nous, nous ne croyons pas devoir laisser s'échapper cette occasion tout en nous joingnant à la presse pour approuver entièrement l'intervention du Gouvernement dans cette circonstance, de dire un mot sur le système de bascule qui prévaut dans le pays depuis quelques années.

Nous approuvons sincèrement, comme nous venons de le dire, la commutation de la peine du malheureux Julien, mais nous croyons de notre devoir d'appeler l'attention de la Législature sur ce sujet. Chaque fois qu'il a plu au représentant de notre Souveraine d'user de sa prérogative de miséricorde, nous nous en sommes réjouis dans l'intérêt de l'humanité, tout en regrettant néanmoins de voir s'introduire cette pratique de réduire au néant les arrêts des Cours de Justice. Si le Gouvernement, en commuant la peine de mort que des tribunaux se trouvent avoir à prononcer de temps a autre, reconnait par là qu'elle n'est plus d'une nécessité indispensable pour la protection de la société. il semble qu'il vaudrait beaucoup mieux l'effacer du livre de nos lois, que de laisser la société dans l'incertitude, sur cette terrible peine.

L'arrêt que prononce le Juge après le *verdict* devrait être exécuté. Il y a, ce nous semble, une importance bien grande à ce que les membres de la Société connaissent la peine qui leur sera irrévocablement

appliquée s'il en violent les lois. Si l'on croit à l'efficacité du gibet pour prévenir le meurtre, qu'on le laisse exister, si au contraire, l'idée de l'échafaud n'arrête pas le meurtrier dans l'accomplissement du crime, hâtons nous de déclarer qu'il n'existe plus de telle chose par nos lois, qu'une exécution capitale. Il ne peut résulter de bien sous aucun rapport de faire intervenir l'Exécutif dans les décisions des tribunaux. Si les lois telles qu'elles existent, ne conviennent pas à nos mœurs et aux besoins de la société, que les ministres présentent un projet de loi aux Chambres—qu'ils réforment et changent ce qui doit être changé et réformé. Très bien, mais tant que la loi existe elle doit être respectée.

An amusing scene took place in the Court of Appeals last Saturday morning. It appears that the records from Quebec had been despatched in time, in the usual course, to be here at the beginning of term, but had not arrived; and that in reply to the numerous telegraphic despatches of the Clerk, who naturally felt rather uneasy at the non-arrival of his charge, no satisfactory answer had been returned. The absence of these papers having become the subject of remark, Mr. Justice Rolland suggested the possibility of their being found lying in some stable at Three Rivers, and Mr. Beaudry, catching at the hint, asked the Court to authorize him to send a special messenger to look for them; but the Court informed him that it could give no such authority, that he must apply to government for the means of preserving his records. But this scene may give rise to serious as well as to amusing reflections. It is by no means a joke to suitors to be told that papers, upon which their most important interests may depend, are carted about between Quebec and Montreal with no other or better protection than the driver of an express van. We do not know where the blame rests; but it is clear, that censure is due in some quarter. It is really too bad that, with an overflowing Treasury, so important a branch of the public service should be insufficiently provided for. But, indeed, it is not alone the Court of Appeals that is deprived of the ordinary appliances for carrying on its business; in one of the most important and largest of the Country Circuits, where from 800 to 1000 cases are taken out every year, there is not a single chair in the Court-house the property of Government, and at late sittings the *Hall of Justice* is lighted by stinking farthing dips borrowed of an ill-paid keeper. That amid such squalid destitution, a proper feeling of respect for the Judiciary should exist, is hardly to be expected, and that those sentiments of awe, so useful in reproving the freedom of licentious witnesses, should prevail, is out of the question. We feel persuaded that the want of that state, necessary to keep up the dignity of the Court, is not unusually the cause of the extraordinary evidence—we would not use a harsher expression—unfortunately but to frequent in civil cases.

In consideration of the delay in the arrival of the records of the Court of Appeals from Quebec, mentioned above, the Court, this morning, (Friday, 10th March,) passed the following rule:

It is ordered to ensure the despatch of business before this Court that henceforth the Clerk, in due time before the commencement of each term, shall cause the records in all causes to be disposed of, to be rendered under his superintendence, or that of his deputy, from the Cities of Quebec and Montreal, as the case may be, to the place where the Court shall be by law appointed to be held at such term.

Below we give the Rules of Practice lately promulgated by the Superior Court. We are disposed to doubt whether these rules are likely to be generally approved of by the members of the Bar, and there are one or two of them to which very serious objections can be made. For instance, we cannot well conceive what is the object of adding additional restrictions to the already difficult process of inscription *en faux* (Vo. V of the New Rules for the Superior Court). In this District, at all events, it has never been the habit of parties to inscribe *en faux* for the purpose of obtaining delay. In reference to the books of last year we only find three inscriptions for hearing on *inscriptions en faux*, and two of those were against the return of the Sheriff in very peculiar cases. At the same time, it must be evident, that so short a delay as four days, will, almost necessarily, preclude persons living at a distance from inscribing *en faux*, except on special application backed with all the detestable nuisance of affidavits of Attornies and parties interested. As little can we see the advantage to be derived from the III Rule, by which every demurrer to a plea or special answer must contain an assignment of the causes on which such demurrer is founded. It may be said, that such has always been the practice at Quebec, and that it is of importance to assimilate the practice in the two Districts. This we readily admit; but why not in preference have followed the practice established here which is far less cumbrous than the other, as in the greater number of demurrers to pleas and special answers, under this new rule, it will be necessary to set up the pleading preceding that demurred to.

To the last rule, the advantages of which are also extended to the Circuit Court, we should be disposed to object, if we felt perfectly certain that our reading of it was correct; but upon this point we have considerable doubts, and as yet we have not found any one more enlightened than ourselves.

RULES OF PRACTICE.

Rule of Practice made by the Judges of the Superior Court, sitting in the District of Montreal, for fixing and limiting the days for taking *Enquêtes*.

It is Ordered that the first eight days only in the months of February, March, April, May, June, September and October, November and December, and the last eight days only in the month of January, shall be *Enquête* days.

Ordered and promulgated in open Court, 23rd day of September, 1853.

Prothonotary's Office,

SUPERIOR COURT,

Quebec.

On this fourth day of January, in the year of our Lord one thousand eight hundred and fifty-four, the Prothonotary of the said Court at Quebec, having on the same day received the same, to that officer transmitted by the Prothonotary of the same Court at Montreal through the Post-office, and having delivered the same over to His Honor the Chief Justice, His Honor Edward Bowen, Chief Justice of the Superior Court for Lower Canada, delivered into the hands of the said Prothonotary at Quebec, the following paper writings—To wit:

Lower Canada,
Superior Court.

Ordered that the following Rules and Orders of Practice be observed in this Court.

That immediately after the delay for filing a contestation to a Report of Distribution shall have issued, if no contestation has been filed, the Plaintiff may give notice that he will move, on the first Juridical Day of the ensuing Term, that the said Report be homologated with costs; and if the Plaintiff omit to give such notice, on the Juridical Day next following the expiration of the delay for the filing of contestations any other party collocated may give such notice.

That the said notice shall not be served on the parties, but that the same shall be posted in the Prothonotary's Office, at least four days.

That every demurrer to a plea or special answer shall contain an assignment of the causes on which that demurrer is founded.

That a party served with a Rule to answer interrogatories upon *faits et articles* shall give his answer before the closing of the *enquête* of the party who has obtained the Rule, and that no answers shall be afterwards received, except by leave of the Court obtained on a special application for the same.

That a motion for leave to inscribe *en faux* against an exhibit fyled, shall be made within four days of the filing of the exhibit, and not afterwards, unless allowed on special application for the same.

That it shall be lawful for a Defendant, by leave of a Judge of this Court, to pay into Court the sum of money which such Defendant

acknowledges to owe to the Plaintiff, and thereupon, unless the Plaintiff shall accept thereof in full discharge of his suit, the said sum shall be struck out of the declaration and paid out of Court to the Plaintiff, and upon the trial of the issue the Plaintiff shall not be allowed to give evidence for the sum so acknowled to be due.

Signed, "Edward Bowen," Chief Justice. "Chs. D. Day," J. S. C.
"Charles Mondelet," J. S. C. "J. Duval," J.
"Ed. Caron," J. S. C. "W. C. Meredith," J. S. C.

Registered in the Prothonotary's Office at Montreal, 13th January, 1854.

Prothonotary's Office,
SUPERIOR COURT,
Quebec.

On the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-four, the Prothonotary of the said Court at Quebec, having the same day received the same, to that officer transmitted by the Prothonotary of the same Court at Montreal through the Post-office, and having delivered the same over to His Honor the Chief Justice, His Honor Edward Bowen, Chief Justice of the Superior Court for Lower Canada, delivered into the hands of the said Prothonotary at Quebec the following paper writings.—To wit:

It is ordered that the following additional Rules and Orders of Practice be and the same are hereby established and declared to be the Rules and Orders of Practice for the Circuit Court for Lower Canada.

That within four days after the return of any writ of execution, and after the Bailiff's return thereto, certifying that there are monies in his hands subject to the order of the Court, the Clerk shall prepare and file a report of distribution.

That the clerk shall prepare a list of all such reports filed, and that such list be posted up in some conspicuous place in his office.

That any party intending to contest such report shall file his contestation at the office of the Clerk, on or before the expiration of four days next after the filing of such report; provided always, that if the report of distribution be filed on any other day than a Monday, the delay for filing the contestation shall be computed from the Monday next following, the day on which such report shall have been filed.

That immediately after the delay for filing a contestation to a report of distribution shall have expired, if no contestation have been filed, the Plantiff may give notice that he will move on the first Juridical Day of the ensuing Term, that the said report be homologated

with costs, and if the Plaintiff omit to give such notice on the Juridical Day next following the expiration of the delay for the filing of contestation, any other party collocated may give such notice.

That the said notice shall not be served on the parties, but that the same shall be posted in the Clerk's office at least four days.

That it shall be lawful for a Defendant by leave of a Judge of the Court, to pay into Court the sum of money which such Defendant acknowledges to owe to the Plaintiff, and thereupon, unless the Plaintiff shall accept thereof in full discharge of his suit, the said sum shall be struck out of the declaration and paid out of Court to the Plaintiff; and upon the trial of the issue, the Plaintiff shall not be allowed to give evidence for the sum so acknowledged to be due.

Signed,	"Edward Bowen," Chief Justice.	"J. Duval," J.
	"W. C. Meredith," J. S. C.	"Ed. Caron," J. S. C.
	"Chs. D. Day," J. S. C.	"Charles Mondelet," J. S. C.

Registered in the Prothonotary's Office at Montreal, 17th January, 1854.

ENGLAND.

It appears that there is but little doubt that the Courts of Law will be removed from Westminster to the neighbourhood of the Inn's of Court. The site which seems to be most popular with the authorities and the bar is that proposed by the Incorporated Law Society, on the borders of the cities of London and Westminster, with the Strand and Fleet Street on the south, and Carey Street on the north.

RESULT OF HILARY TERM EXAMINATION.

The number of candidates who gave notice of their intention to appear before the Examiners was 108, but only 85 produced satisfactory testimonials of due service. We regret to hear that of these, no less than 23 did not pass.—*London Legal Observer.*

SCOTLAND.

IMPORTANT RAILWAY DECISION.—Railway tickets can be used only to the stations marked on them. Two cases respecting the right of passengers, on the Glasgow and South-Western Railway, to leave

the train at intermediate stations, were decided by Sheriff Anderson, in the Small Debt Court at Kilmarnock, on Thursday. It appears that the fare for the *whole* distance from Campbelton to Glasgow, by steamer to Ayr, and by railway to Glasgow, is considerably *less* than to several of the stations betweeen Glasgow and Ayr, and that persons have been in the practice of taking out Glasgow tickets at Cambelton, and then leaving the train at the intermediate stations, thus paying less than if they had taken tickets to the station to which they actually intended to travel. To put a stop to this practice, the railway company brought small debt actions against two passengers for the difference of fare between what they actually paid and what they would have paid had they taken tickets to Dalry. During the discussions the sheriff repeatedly expressed his opinion that, while the company might, if they thought proper, allow passengers to leave the train at intermediate stations, no person could demand it as a right.—*North British Mail.*

This important, or as it should more properly be called extraordinary, decision we copy from the North British Mail, and can only regret that we are not in possession of the learned Sheriff's reasons for this judgment.

SCOTCH LAW APPOINTMENT.

The Queen has been pleased to appoint Alexander Stuart Logan, Esq., Advocate, to be Sheriff of the Shire or Sheriffdom of Forfar.—*From the London Gazette of the 7th Feb.*

The religious feelings of a certain Baronet, hight Sir James Colquhoun, of Luss, whose estates extend along the romantic shores of the Gareloch, were weekly outraged by the sight of steamboat-loads of the smoke dried slaves of toil from Glasgow, who, preferring the fresh mountain air to the gin-palace, came to pass their Sundays on his shores.

Sir James' prohibition to the steamboat company to land their passengers on his wharves having been disregarded, and having equally unsuccessfully tried force to repel the invaders, the worthy Baronet applied to the Court of Session for an interdict which was refused. In giving judgment the Lord Justice Clerk said, that the applicant had not shown any patrimonial right to these wharves, and that "there was no public law which shut up piers, harbours or highways on the Sunday; there was no law against travelling on Sunday by sea or land, entitling the toll-keeper to shut his gates, and the harbour-master to exclude vessels from his port."

On Friday, (3rd March,) the Court Martial reassembled to try Private Whelan, of the 26th Regiment, on a charge of having fired off his musket, on the evening of the 9th of June last, without orders. To this charge the prisoner pleaded "not guilty"; upon which the Judge

Advocate stated that, "it was not the intention of the Court to bring forward any evidence against him." The Court was then declared closed.

The sentence of Julien, condemned to death for the murder of his father-in-law, has been commuted to imprisonment for life in the Provincial Penitentiary.

AN ACT IN RELATION TO LIBEL.—The people of the State of New York, represented in Senate and Assembled do enact as follows:

Section 1. No reporter, editor, or proprietor of any newspaper, shall be liable to any action or prosecution, civil or criminal, for a fair or true report in such newspaper or any judical legislative, or other public official proceedings, of any statement, speech, argument, or debate in the course of the same, except upon actual proof of malice in making such report, which shall in no case be implied from the facts of the publication.

Sec. 2. Nothing in the preceding section contained shall be so constructed as to protect any such reporter, editor, or proprietor, from an action or indictment for any libellous comments or remarks superadded to and interspersed or connected with such report.

Sec. 3. This Act shall take effect immediately.—*Montreal Gazette.*

We hope the above Bill may pass into Law, and sincerely wish that the Canadian Legislature would have the wisdom to follow their example. Indeed it appears strange that this protection, so simple and so harmless, has not been sooner afforded to public journalists.

(*From London Legal Observer.*)

Court of Criminal Appeal.

Regina v. *Reid.* Jan. 21, 1854.

MASTER AND SERVANT.—CONVICTION FOR LARCENY.—CONSTRUCTIVE POSSESSION.

R. the servant to N., was sent by him with his cart to bring home some coals, when he took out some and left them at another person's house: a conviction was affirmed of larceny.

This was a conviction for larceny. It appeared that the prisoner was a servant to a Mr. Newton, and had been sent by him with his cart to bring home a quantity of coals, when he took out some of the coals and left them at another person's house. The question was whether the offence amounted to larceny or embezzlement.

The *Court* said, the coals were in the constructive possession of the master, to whom the cart belonged, by his order by means of the prisoner, his servant, and that the conviction for larceny was therefore proper. *Spear's Case*, 2 East's, P. C., 568; 2 Leach, 825; and the conviction would therefore be affirmed.

Regina v. *Greenhalgh and another.* Jan. 21, 1854.

CONVICTION FOR OBTAINING ORDER FOR PAYMENT OF MONEY BY FALSE PRETENCES FROM TREASURER OF BURIAL CLUB.

It appeared that it was the duty of the prisoners, the Secretary and the Collector of a Burial Club, to report the sum payable on deaths to the Treasurer, and they had reported 50s. *to be due on the death of a member's child, and had obtained payment of an order for that amount from the Treasurer. The child was not that of a member.* Held, *that they had been rightly convicted of obtaining an order for payment of money by false pretences.*

This was an indictment against the Secretary and the Collector of a Burial Club, at Bolton, for obtaining from the Treasurer an order for the payment of 2*l.* 10s., by means of false pretences, and also of ob-

taining 2*l*. 10*s*. from the Treasurer by false pretences. It appeared that it was the prisoners' duty to report the sum payable on deaths, and that they had obtained the sum in question on the death of a child of Robert Lord, but who was not a member of the Society, as they had reported. The prisoners were convicted and sentenced to 18 months imprisonment subject to this case.

J. Cross for the prosecution.

The *Court* said, that the conviction on the count charging the obtaining an order for money under false pretences was right, and it was accordingly affirmed.

Regina v. *Burton*. Jan. 28, 1854.

CONVICTION FOR STEALING GOODS.—PROOF OF IDENTITY WITH PROSECUTOR'S GOODS.

A conviction was affirmed against the prisoner for stealing pepper from Dock Company, where he was discovered by an officer coming out of a room in which pepper was stored, and had no business there, and had thrown the pepper away, and said, "I hope you will not be hard on me"—notwithstanding the identity of the pepper thrown away by the prisoner with that in the room could not be shewn.

This was an indictment of the prisoner for stealing a quantity of pepper, and it appeared that one of the officers of the Dock Company, where he was employed, had stopped him on seeing him come out of a room in which he had no right to be, and that the prisoner had said, "I hope you will not be hard on me," and had thrown away the pepper. The Assistant Judge, at the Middlesex Sessions, had over-ruled an objection that as the pepper could not be proved to have been stolen, an acquittal should be directed.

Ribton for the prisoner.

The *Court* said, that the conviction must be confirmed.

Regina v. *Gill*. Jan. 28, 1854.

CONVICTION FOR EMBEZZLEMENT.—SERVANT TAKING MONEY MARKED BY MASTER.

A conviction was affirmed against the servant of a publican for embezzling certain marked money, although it

appeared the money belonged to the publican, who had employed a friend to pay the same for articles purchased, with a view of testing the servant's honesty.

The prisoner was servant to a publican, and had taken from the till certain marked money, which his master had employed to pay for articles purchased, with a view of testing the prisoner's honesty. The money, however, belonged to the master. On the trial at the Middlesex Sessions, the prisoner was convicted.

Clarkson for the prosecution.

The *Court* said, that in accordance with *Rex* v. *Headge*, 2 Leach, 1033; R. & R. 160, the conviction must be affirmed.

Regina v. *Overton*. Jan. 28, 1854.

INDICTMENT FOR EMBEZZLEMENT.—EVIDENCE.—RECEIPT STAMPS.

On an indictment for embezzlement, the prosecutors gave in evidence a book kept by S. & Co., in which purchases were entered and which was signed by the person authorised to receive payment for the same, in order to prove by the Clerk payment to the prisoner, and his identity. Held, *that it was inadmissable for such purpose without a Stamp, and the conviction was reversed.* Held also, *that the Clerk should have proved payment to the person signing, and then that another witness should have indentified the hand writing in the book.*

This was an indictment for embezzlement. It appeared that Messrs. Shoolbred & Co. kept a book in which purchases made by them were entered, and which was signed by the person authorised to receive payment for the same, and that Messrs. Shoolbred's Clerk had proved payment to the person signing the book, it was produced to the Clerk in order to show the indentity of the prisoner as having signed in respect of goods purchased from his employers, Messrs. Wellstead & Co. An objection on the trial before the Recorder of London, that the entry was not admissable without a stamp had been overruled.

Metcalfe, for the prisoner.
Parry, for the prosecutors.

The *Court* said, that in accordance with *Regina* v. *Hunter*, 2 Leach, 624; 2 East, P. C. 928, the document required a stamp as being an acknowledgment or receipt for the payment or discharge of a sum of money, and a proof of a direct issue between the parties. The course should have been, instead of receiving the whole entry in evidence, to have asked the witness whether he paid the money to the man who signed the book, and then to have proved by another witness, who knew the prisoner's hand-writing, that he signed the book. The conviction would therefore be reversed.

Regina v. *Sharman.* Jan. 28, 1854.

CONVICTION FOR UTTERING FORGED TESTIMONIAL.

An indictment was affirmed for uttering a forged testimonial, purporting to be written by the rector of a parish, recommending the prisoner and his wife as fit and proper persons to undertake the charge of a school, for the purpose of receiving the emoluments of the office.

This was an indictment against the prisoner for forging a testimonial purporting to be written by the rector of a parish, recommending the prisoner and his wife as fit and proper persons to undertake the charge of a schol, and also for uttering the same. On the trial at the Central Criminal Court, he was acquitted on the charge of forging, but found guilty on that of utterring for the purpose of deceiving and of receiving the emoluments of the office.

Clarkson, for the prosecution.

The *Court* affirmed the conviction.

Regina v. *Watts* Jan. 21, 1854.

INDICTMENT FOR STEALING A PIECE OF PAPER. — UNSTAMPED AGREEMENT.

A prisoner was indicted for stealing a piece of paper, the property of P. It appears that it was an unstamped agreement, whereby he agreed to build two cottages for the prosecutor. Held, *that as the agreement was evidence of the rights of the parties, although it could not be given in evidence as an agreement, it was not the subject of larceny, and the conviction was quashed.*

This was an indictment for stealing a piece of paper, the property of a Mr. Francis Pattison; and it appeared that it consisted of an unstamped memorandum of agreement, whereby the prisoner agreed to build and complete two cottages for the prosecutors. On the trial at the Yorkshire North Riding Quarter Sessions, the prisoner was convicted.

Bliss & Simpson, for the prisoner, contended that as the agreement was a subsisting valid agreement, it was not the subject of larceny at common law as a piece of waste paper.

Rice, in support of the conviction.

Cur. ad. vult.

The *Court* (per Lord *Campbell*, C. J., *Alderson*, B., *Coleridge*, *Maule*, *Wightman* and *Williams*, J. J., *Platt*, and *Martin*, B. B., *Crompton*, J., *dissentiente Parke*, B.), said, that the agreement, although not capable of being given in evidence as such, was available as evidence of the rights of the parties, and it could not be the subject of larceny. The conviction would therefore be quashed.

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BOOKS RECEIVED.

Taché, on Seigniorial Tenure.

THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

CRIMINAL APPEAL.

It must have struck every one, who his taken the trouble to think about procedure at all as something, extraordinary, that while we have Appeal in actions of the most trifling amount where real property is concerned, to every Court in the country, and from that to the Privy Council, a decision affecting the life or liberty of a British subject may be irrevocably rendered by a single judge. This strange anomaly in procedure no longer exists in England. By the 11 and 12 Victoria, chap. 78, the fifteen judges of Courts of Common Law at Westminster, or five of them, including one or all of the Chiefs of the Queen's Bench, Common Pleas, or Exchequer, form a Court of Criminal Appeal, to which may be referred the conviction of any one found guilty of any treason, felony or misdemeanour before any Court of Oyer and Terminer or jail delivery, or Court of Quarter Sessions. So long as Criminal Appeal was only a theory, in a new country, such as this, we might be excused for not introducing it; but now, that it has been tried in England, and stood the test of several years experience, there can be no excuse for our not following the example. At all events, *we* cannot plead conservatism in judicial matters, as a reason for not trying an experiment which at any rate has humanity to recommend it.

TARIF DES AVOCATS.

Nous devons nècessairement attirer l'attention des Tribunaux sur les omissions singulières qui se rencontrent dans ce tarif, et qui sont de nature a exciter les plaideurs de mauvaise foi a entraver l'execution des jugemens rendus contre eux dans les Cours Civiles. Nous devons entre autres faire remarquer que dans ce tarif on ne trouve aucune provision dans les cas de Requête Civile, de tierce-opposition et de dèsaveu. Ces trois procédés comme tout de monde le sait sont d'une nature bien grave En France les plaideurs *téméraires*, qui succombaient sur ces procédés étaient assujettis à de *fortes amendes*. Dans ce pays, le silence du tarif sous ce rapport permet aux plaideurs de mauvaise foi d'adopter impunément ces procédés, dans la vue de prolonger les délais au détriment de leurs créanciers. Dans un cas récent de Requête Civile la Cour n'a accordé que 11s. 8d. pour honoraires comme sur une simple Requête.

Nous croyons que ce sujet est d'intérêt public, et par conséquent est digne de fixer l'attention des Juges. Le tarif qui peut être aussi facilement amendé que les régles de pratique qui le sont souvent, requiert entr'autres des amendemens sur les sujets que nous avons indiqués.

COURT OF QUEEN'S BENCH.

It is our painful duty to record the recital of certain occurrences which took place in the Court of Queen's Bench, during the present Criminal Term. On Wednesday, the 22nd of March, as the learned Queen's Counsel, who conducts the Crown business, (Mr. Driscoll) was addressing the Court—composed of Mr. Chief Justice Rolland and Mr. Justice Aylwin—he was interrupted by the former of the learned judges, asking him "To whom do you address yourself?"—Mr. Driscoll replied, "To the Court."—Rolland, C. J., "You should address yourself to the President of the Court."—Mr. D., "I beg your Honor's pardon, it was involuntary."—R., C. J., "That's impossible, it happens too often; it must be intentional."—Mr. D., "Upon my honor as a gentleman, it was involuntary."—R., C. J., "No Sir, it was willing."—Mr. D., "Sir, I'll stand anything but that; but when I state on my honor as a gentleman that a thing is so, I'll not allow you to tell me it is not. My honor is as good as yours."—R., C. J., "Do you wish to push matters to the extreme?"—Mr. D., "I am willing to suffer any punishment; but I wont submit to have my honor questioned. I have plenty of witnesses." Mr. Driscoll was ordered to proceed, and no apology was offered. Mr. Justice Aylwin, took no part in the proceeding, and the learned Chief Justice continued to preside during the rest of the day.

On the morning of the 27th, it appears, Mr. Chief Justice Rolland unobserved by Mr. Driscoll entered the Court while the learned Queen's Counsel was addressing Mr. Justice Aylwin, who had opened the Court in the absence of the Senior Judge. As soon as Mr. Driscoll perceived that Mr. Chief Justice Rolland was upon the Bench, and fearing he might have given offence, he turned round, and appologised to the learned Chief Justice for not having sooner addressed himself to him; upon which Mr. Chief Justice Rolland rose and left the Bench, giving it to be understood that he did so as he thought himself insulted. The learned Chief Justice did not again appear on the Bench, but the business of the term proceeded without interruption under the guidance of the junior Judge. On Monday evening, the calendar having been gone through, Mr. Justice Aylwin, from whose manner, by the way, no one would have supposed that he was bursting with indignation at the conduct of the learned public prosecutor, adjourned the Court till next day at one o'clock, when the prisoners were ordered to be brought up for sentence. The Court adjourned—the crowd dispersed, little knowing what a night would bring forth. The next day (28th) at one, Mr. Justice Aylwin alone came on the Bench, and proceeded to read a paper, of which the following is a copy:—

"The marked misbehaviour of the person who represents the Attorney General, towards my brother and my senior, also to one who was Chief Justice of the District of Montreal, and who for the period of four and twenty years has filled the seat of Justice he e, with honour to himself and advantage to the Crown and the country, forbids my further proceeding alone at this time. I shall await the determination of the Executive Government, as to the performance o the duty of Public Prosecutor by the Attorney General in person, o by his sufficient and proper representative, but I cannot, with the regard and respect which I owe, and to which I therefore heartly testify, to my venerable revered and learned associate, proceed to the final disposal of the public business at this present term, until I see before me some gentleman as regardful of his duty to his superiors as he ought to be of his own rights, to move for judgment against the parties now awaiting it at the hands of the Court.

"Let this Court therefore stand adjourned until Tuesday, the eleventh day of April next, at the hour of noon."

The above narrative hardly requires comment. As to the first day's proceedings or to the ebullition of feeling which induced the learned Chief Justice to leave the Bench on the 27th, it is not necessary for us to speak. Mr. Driscoll, on the spot, sufficiently vindicated his own honor, and in his person that of the bar; and even if he had not done so as spiritedly as he did, we should be content to let Mr. Chief Justice Rolland's long and useful service plead, if not as an apology for his conduct on this occasion, at least as a reason for our throwing it as much into the shade as possible. But for Mr. Justice Aylwin there is no such excuse as long service or momentary heat to be offered. We must presume that it was after a night's cool deliberation that he made up his mind to enact alone the third act of this farce—as farce we suppose it may be called, though one at which we cannot afford to laugh—which is, if possible, more inexcusable than the first act. Putting out of the question the unpardonable dereliction of duty in detaining prisoners for 15 days in gaol unsentenced, the language in which it is expressed is equally disgraceful to the heart and to the understanding of its author. Employed to the most juvenile member of the bar, Mr. Justice Aylwin ought to know, that it is not only indecent, but unprofessional,—the technical manner of addressing Counsel being the *learned* gentleman and not the *person*; no matter how far the person referred to may be removed both from gentility and from learning. But when such expressions are made use of to a gentleman of Mr. Driscoll's age, and to one who has been thought worthy of being named one of Her Majesty's Counsel, language fails to express the extreme amount of their impropriety.

The learned Judge had better beware how he calls in question the expediency of employing the usual titles of courtesy from his valuation of the merits of the party addressed. He should remember that his and his brethren's claim to such appellations is just as liable to be called in question as that of members of the bar. In leaving this disagreeable subject, to which we shall be glad not to be again obliged to recur, we

would only add one observation. In deferring the passing of sentence till the 11th of April, it was evidently the intention of Mr. Justice Aylwin to give the public to understand that this step was necessary owing to Mr. Driscoll's "marked misbehaviour;" but neither his manner nor his actions, subsequently to any possible cause of complaint, favor this pretension; on the contrary, it is obvious that, if at the rising of the Court on Monday evening he had not intended to pass sentence on the following day, he would not have ordered the prisoners to be brought up for judgment. Was the taking of offence then an afterthought? We hope the delay in the proceedings of the Court may not be due to any less worthy cause than that alledged, unworthy as it is.

Since writing the above, the Court of Queen's Bench met according to adjournment on the 11th instant. Present: Chief Justice Rolland and Mr. Justice Aylwin. Mr. Driscoll, Q. C., having taken his seat within the bar as Crown Prosecutor, Mr. Justice Aylwin read from a paper which he held in his hand as follows:—

"At a previous day, in this Term, the presiding Judge found it necessary to notice that the Queen's Counsel who has conducted the public business for Mr. Attorney General pointedly addressed himself to the Junior Judge, and not to the Court. A vehement disclaimer of any improper intention was then made by the learned Counsel, and was followed by an expression of readiness to go to gaol, uncalled-for, and under the circumstances unseemly in the person and from the quarter whence it proceeded.

"It is difficult to conceive that a Counsel who for years has been accustomed to see my learned brother presiding here, and to address him as Chief Justice of Montreal, and who, for the last four years that I have had the honor of a seat on this bench, has only known me as the Junior Judge, and never before used such a mode of address, could inadvertently, all at once adopt it. The plea of inadvertence, however, was made upon the occasion referred to, and matters rested there.

"The tendency of this behaviour was sufficiently obvious, but the Court was not long left to doubt of its actual effect by proofs, which will not now be more particularly mentioned, as in accordance with practice they will have to be brought forward in due course at a future time, and another stage of proceedings, should it be necessary.

"It was to have been hoped, after what had occurred, that the rules of courtesy and decorum would not again be violated,—it was therefore with mingled pain and surprise that on Monday, the 27th of March last at the opening of the Court, I was made to witness a repetition of the same conduct, assuming from that circumstance, the distinctive character of insult.

"If Courts of Justice can confidently look for respect and assistance, in the performance of their functions, in any one direction more than another, it should be from their own officers, and as Mr. Attorney General is the highest of these officers when here, his representative would seem more eminently bound to give active aid to the Court in his absence.

"Instead of active aid, the Court has experienced marked and offensive obstruction.

"If obstructions of justice and contumelious behaviour by inferior officers, or mere bystanders, call down speedy punishment upon the offender, how can Courts shut their eyes and their ears upon attempts openly made in the highest places to treat them with scorn and mockery.

"When such cases occur, even the vindication of the Court's authority becomes more difficult by the very position of the offender himself, and it was particularly so in this instance to which I know no parallel. But whatever may be the consequences, authority must be vindicated and maintained.

"When, in the usual course, on the next day, being the 28th March, the term was to have been closed by sentencing the convicts. I felt (what I hope was not an improper) repugnance or inconsistent with duty—but I did feel a repugnance, to commence the proceedings by the adoption of penal measures against the Crown Prosecutor himself, for to pass over in silence the occurrence of the previous day was impossible.

"It appeared to me that an adjournment to a future day was the only course left, as it would enable Mr. Attorney General, or Mr. Solicitor, his coadjutor, to attend here in person (as was formerly practised) and that the presence of one of these high functionaries, under the circumstances was due to the dignity of the Court, and to the performance of the public business which occasionally requires confidential communication between the Crown Counsel and the Court.

"Neither of these officers is here in his place to-day, it is to be presumed because more weighty duties, and the exigencies of the State and the public service forbid their being spared from the seat of government. But this Court requires no auxiliary and no extrinsic aid to make itself respected within these walls, or to enforce its authority at large beyond them, throughout that portion of the Queen's dominions which is subject to its jurisdiction. Whenever authority is necessary to carry out the great purpose for which all Courts of Justice are designed, the maintenance of law and order, its inherent powers are amply sufficient to ensure it.

"However painful it may be to call into exercise the power of the Queen's Bench in cases of contempt—when discipline requires it to curb the unruly—it will be resorted to, and firmly enforced.

"In the opinion of the Court, it has become necessary, under existing circumstances, to make the following rule. But before having it read, I must say, that though appearences are strong against the party whose conduct is incriminated the intention in this, as in all other criminal accusations, constitutes the offence: the mild course of proceeding to be adopted, will enable the accused to dissipate the charge, and to purge himself of the contempt upon his oath, which he can readily do, if innocent:—

"RULE.

"Henry Driscoll, Esquire, one of Her Majesty's Counsel, conducting the Crown business before the Court at this present Term for Mr

Attorney General, having on Monday the 27th day of March last, when there were present on the Bench Mr. Justice Rolland, Presiding Judge, and Mr. Justice Aylwin, addressed himself in the singular number and in a marked manner to Mr. Justice Aylwin, and not as he was bound to do, to the Court or the Presiding Judge, and it appeared to the Court, that in so doing, the said Henry Driscoll, Esquire, acted wilfully and designedly with intent to cast contempt and reproach upon the Court, and to obstruct its proceedings ; it is ordered that the said Henry Driscoll, Esquire, do show cause on the first day of the next Term, to wit, Saturday the fourteenth day of October next, why an attachment for contempt should not issue against him and such farther proceedings be therefore had as to law and justice may appertain."

As the learned Judge has thought proper, protected by his position, to take upon himself to contradict Mr. Driscoll's assertion on his honor, he will probably not be surprised if we should expect from him an impartial statement of facts in the narrative which he has so carefully prepared and so ostentatiously published.

The first clause of Mr. Justice Aylwin's narrative contains the first statement, the correctness of which, as we were present on the occasion, we venture to impugn. Mr. Driscoll did not say that he was ready " to go to gaol ;" but that he was " willing to suffer any punishment," but that he would not submit " to have his honor questioned," and this observation was only made after a menace of some undefined punishment which the Court, in its *discretion*, though it better not to execute. On this more amplified statement of the facts, as they really happened, we imagine the government and the public will hardly agree with Mr. Justice Aylwin in considering that Mr. Driscoll's answer, even if it had been such as incorrectly stated in the judicial narrative, was either " uncalled for" or " under the circumstances unseemly." Indeed we can hardly conceive a more special call for such an observation than a threat of an unjust punishment, or circum tances under which an answer would be more seemly than when a gentleman is called upon indignantly to repel an attack on his veracity. We have no hesitation in saying that, had Mr. Driscoll tamely submitted to such an insult, and had his conduct been brought under the notice of the bar, we should have been in favor of his being severely reprimanded for ungentlemanly and unprofessional conduct. We have already drawn attention to the apparent improbability in the announcement of the time at which Mr. Aylwin thought it necessary to take offence, we shall not, therefore, again refer to it, as it must be sufficiently obvious. Further on, the learned Judge seems to express some uncertainty as to the cause of the non appearanceof either the Attorney or Solicitor General " to move for judgment." We think we can account for their absence, and above all for the presence of Mr. Driscoll, by the hypothesis that the learned Attorney General and the other members of the Government disapprove entirely of the proceedings of the Court and mean to continue the present public prosecutor in his office ; in which determination, we feel persuaded, they will be supported by the force of public opinion, a force not to be overcome by impotent threats of commitment. Having done

with the facts of Mr. Justice Aylwin's *manifesto*, we shall not now refer to the law of this *rule*, as it may happen that at another time and in another place its legality may become the matter of more particular investigation.

Par son Jugement dans la cause de *Desbarats* v. *Lagrange* et divers opposants dont nous donnons un rapport dans ce numéro la Cour Supérieure a renversé la pratique invariablement suivie au Barreau de Montréal, de lier la contestation d'une opposition avec celle d'un Jugement de distribution dans un même procédé. Le résultat le plus certain qui doit découler de cette décision est de rendre la procédure encore plus embrouillée qu'elle ne l'est, multiplier les frais, faire perdre peut être les créances d'un grand nombre de personnes qui se trouvent dans la même position que les Opposants en la cause mentionnée, et en outre, pourquoi ne le dirions nous pas ? de compromettre inutilement les membres du Barreau vis-à-vis de leurs clients.

Depuis quelques mois les enquêtes de la Cour de Circuit étaient complètement arrêtées, par suite de la décision rendue à différentes reprises par le Juge siégeant a l'enquête de la Cour Supérieure portant " que les enquêtes de la Cour de Circuit ne devaient pas se tenir dans la salle des enquêtes de la Cour Supérieure." Le Greffier avait reçu des ordres formels de ne point faire d'entrée au Régistre et le Crieur de ne pas appeler les parties à procéder. Pour tout dire, il n'y avait pas de possibilité de déterminer les causes de la Cour de Circuit, ce qui ne manqua pas de créer un certain émoi puisque cet état de chose équivalait à un *déni de justice*.

Le cinq du courant dans une cause à la Cour de Circuit de St. Hilaire v. Murphy et Brossard intervenant, le Demandeur ayant procédé à l'examen d'un témoin et voulant faire appeler la partie adverse pour le transquestionner, l'Hon. Juge présidant renouvela ses ordres et fit valoir la même objection. Le Demandeur insistant néanmoins sur son droit cita a l'appui de sa prétention l'acte de judicature de 1849, clause 60 " et tout tel Juge lorsqu'il présidera à des enquêtes dans des " causes pendantes à la Cour Supérieure devra présider aux enquêtes " dans les causes pendantes à la Cour de Circuit qui devront être " reçues le même jour et au même endroit." Après l'audition des Avocats dans la cause MM. Lafrenaye et Loranger et de plusieurs autres membres du Barreau, son honneur M. le Juge Mondelet en ayant conféré avec M. le Juge Smith déclara qu'à l'avenir les parties pourraient procéder aux enquêtes de la Cour de Circuit devant les Juges de la Cour Supérieure.

Le Demandeur dans la cause susmentionnée avait évidemment raison de prétendre que la Cour de Circuit avait droit en vertu de l'amendement passé en 1853, 16 Vict., chap. 194, de fixer comme ç'a

été le cas les enquêtes de la Cour de Circuit, et en vertu de la clause susécrite d'ordonner que ce soit dans le même endroit et pour le même jour que les causes de la Cour Supérieure. Car l'amendement 16 Vict., chap. 194, n'a pas abrogé la 60me clause ; tout son effet est simplement de faciliter la dépêche des affaires de la Cour de Circuit en l'absence d'un Juge pour présider aux enquêtes, et d'obliger alors le Greffier d'enrégistrer les objections ; en sorte que l'amendement ne dispense pas le Juge de présider aux enquêtes de la Cour de Circuit lorsqu'il préside aux enquêtes de la Cour Supérieure. Le but bien évident de cet amendement est de mettre les parties en état de procéder aux enquêtes de la Cour de Circuit sans la présidence d'un Juge comme cela arrive fréquemment dans les circuits à la campagne et sans certainement dispenser le Juge de la Cour Supérieure de les présider lorsqu'il préside à d'autres enquêtes.

Nous sommes heureux de pouvoir annoncer que cet état de choses qui arrêtait le cours de la justice dans les causes portées devant la Cour de Circuit est enfin disparu.

THE LATE MR. JUSTICE TALFOURD.

It is with feelings of the deepest regret, both professional and personal that we record the death of Sir Thomas Noon Talfourd, on Monday last, the 13th March. This much lamented and sudden event took place at Stafford, whilst the learned Judge was delivering his charge to the Grand Jury, and commenting with his usual eloquence on the causes which had produced the fearful and numerous cases of crime which then stood for trial,—there being no less than 30 manslaughters, and in the whole 100 prisoners. It seems not improbable that the deep feeling which was excited in the mind of the Judge by this enormous amount of criminality, in some degree contributed to the fatal result. In the midst of his address he was seized with apoplexy, and although attended by several medical men, expired almost immediately.

It is consolatory to those who had the gratification of knowing Mr. Talfourd in private as well as public life, that the public journals have uniformly expressed the highest respect and regard for his eminent worth, genius, and learning, both as a lawyer and an author. In the Profession there is but one sentiment of deep regret for this unexpected calamity. It is, indeed, lamentable beyond all measure, that a man so highly gifted in all excellent qualities of head and heart, so beloved by all who knew him, should be thus cut off without warning, at a time when, in the ordinary course of nature it might have been anticipated that he would fulfil the duties of his judicial station for many years, and then retire for some period of leisure and tranquility before he departed hence and should be seen no more.

It is our melancholy duty to notice some of the principal events of his life and his legal and literary labours.

He was born at Reading, on the 26th January, 1795, and became

a pupil of Mr. Chitty, the eminent Special Pleader, in 1813. Besides his ordinary studies and labours as a diligent pupil, he zealously and ably assisted in the composition of several of Mr. Chitty's voluminous works. He was a member of the Middle Temple, practised as a Special Pleader for a few years, and was called to the Bar on the 9th February, 1821. He joined the Oxford Circuit and Berkshire Sessions, and at this time, we are informed, he was a Law Reporter for the *Times*.

In 1833, he was appointed Recorder of Banbury, and called to the degree of Serjeant-at- Law. By the Royal Warrant of William 4th, of 24th April, 1834, he was included in the Patent of Precedence next after Mr. Justice Coleridge. He was promoted, in 1846, to the dignity of Queen's Serjeant, taking precedence of all Queen's Counsel. Lord Lyndhurst gracefully conferred this honour on a political opponent, whom he esteemed as a man of genius. On the promotion of Sir Thomas Wilde, in July, 1846, to the Chiefship of the Common Pleas, Mr. Serjeant Talfourd became the Queen's Ancient Serjeant, —the permanent head of the Bar.

His career in Parliament commenced in January, 1835, when he was returned at the general election for his native borough; he was re-elected in July, 1837, and continued until the general election in 1841. He was again elected in August, 1847, and held his seat till his elevation to the Bench.

As a legislator, he was distinguished by the introduction of the Bill for amending the Law of Copywright, which he advocated for several Sessions with an eloquence rarely equalled and never surpassed, and the measure was ultimately carried under his guidance, though at the time it passed he was not in the House. He also commenced, and successfully carried through, the Bill for the custody of infants,—one of the several measures of Justice and humanity for which he always contended.

In the month of July, 1849, during the Summer Circuit, on the death of Mr. Justice Coltman, the learned Serjeant was raised to the Common Pleas Bench. To all these honours must be added that of the degree of Doctor of Civil Law, which was conferred on him by the University of Oxford. Such has been his eminent course as a lawyer and a senator. We turn now to review the distinction he attained as an Author.

Whilst a law student, he wrote Strictures on Capital Punishments, the true nature of Justice, and the legitimate design of Penal Institutions; with Observations on the Punishment of the Pillory; and an Appeal against the Act for regulating Royal Marriages. He also wrote an Address to the Protestant Dissenters of Great Britain in regard to the Roman Catholics. Besides his contributions to the many elaborate works of Mr. Chitty, we may notice his several editions of the Quarter Sessions Practice, the last of which was published in 1841.

Viewing him next as a literary author, his benevolent and enlightened disposition shone forth at an early period of his life. Whilst at school he wrote a poem on the education of the poor. His fertile im-

agination was also evinced at the same period in "An Indian Tale;" to which may be added a didactic poem on the union and brotherhood of mankind. He was also the author of "An estimate of the Poetry of the Age," in which he zealously defended Mr. Wordsworth from the hostile attacks which were made upon him by almost all the critics of the time. He also contributed many articles to the Encyclopædia Metropolitana, the Edinburgh Review, and several Magazines.

His clebrated tragedy of "Ion" was written in 1834, and on the 26th May, 1836, it was represented at Covent Garden Theatre, then under the management of Mr. Macready. His "Athenian Captive" was subsequently produced, and afterwards "Glencoe." He also edited "The Remains of Charles Lamb," and others works. These were followed by his "Vacation Rambles."

He married soon after he was called to the Bar, and has left a widow and three sons and two daughters, to lament his grievous loss. One of his sons was called to the Bar in Michaelmas Term, 1852. It remains only to add, that throughout his life he was distinguished alike for his kindness and generosity and his prompt and brilliant intellect. During his career at the Bar, for nearly thirty years, he acquired the regard and esteem even of the competitors whom he surpassed. His elevation to the judgment-seat made no difference in the warmth of his friendship or the affable courtesy of his manner to all, however humble, who approached him. He held his high office meekly and nobly, and though he has not lived long to enjoy its dignity, he died honoured and respected throughout the land which gave him birth, and his renown will extend wheresoever the English language is understood. In the words of Mr. Justice Coleridge, addressed to the Grand Jury at Derby, "he had one ruling purpose of his life—the doing good to his fellow-creatures. He was eminently courteous and kind, generous, simple-hearted, of great modesty, of the strictest honour, and of spotless integrity." This is the highest praise from a man of kindred excellence, pre-eminently competent to pronounce a just, sincere, and discriminating opinion. —*Legal Observer, London, March* 18, 1853.

(*From London Legal Observer.*)

Court of Criminal Appeal.

Regina v. *Beaumont.* Jan 21; Feb. 4, 1854.

MASTER AND SERVANT.—EMBEZZLING MONEYS.—EVIDENCE OF PRIVITY WITH RAILWAY COMPANY.

On an indictment against the prisoner for embezzling the moneys of his master, it appeared that the master had contracted with a Railway Company to deliver coals to their customers, and to account for the money by himself or his carmen. It was the custom for the carmen to receive the invoices from the Company, and on receiving the money for the coals on delivery, to bring the delivery note to the master to have the cartage entered, and then to pay the money to the Company's clerk. Held, *that there was such privity between the Company and prisoner as to render the money their property, and the conviction was quashed.*

This was an indictment of the prisoner, as servant of Edward Wiggins, for embezzling 5*l* 10*s*, the property of his master. It appeared on the trial at the Central Criminal Court, that the prosecutor had contracted to deliver coals for the Great Northern Railway Company to their customers, and to account for the money received by himself, or by his carmen. It was the practice for the invoices to be given to the carmen, who received the money for the coals on delivery, and then went to the prosecutor's office with the delivery note, in order that an account of the cartage might be entered, and afterwards paid the money to the Company's clerk. The prisoner had received the sum in question, and had not paid it over.

Dearsley, for the prisoner, contended that the moneys had not been received by the prisoner on account of the prosecutor, but of the Railway Company; and that there was no embezzlement of his money under the 7 & 8 Geo. 4, c. 29, s. 47.

Clarkson & Giffard, for the prosecutor, contra.

Cur. ad. vult.

The *Court* said, that if there was a privity to be inferred between the Company and the prisoner, so as to make him their agent in receiving the money and agreeing to pay it over to them when received, the money would be their property, and not that of the prosecutor, and that as such privity had been established the conviction must be quashed.

Regina v. *Inhabitants of Horsea, Yorkshire, East Riding.* Feb. 11, 1854.

INDICTMENT FOR NON-REPAIR OF ROAD.—WHERE DESTROYED ENTIRELY BY ENCROACHMENT OF SEA.

On an indictment against the Defendants for the non-repair of a road to the sea, it appeared that a large portion had been entirely swept away by the encroachment of the sea. Held, *that they were no longer liable to repair, nor to make an available road to the sea.*

This was an indictment for the non-repair of a road called the sea road which had been set by commissioners under the authority of an Act passed in 1801, for enclosing common and waste lands, and which had been repaired by the defendants until a portion of it was entirely swept away by the encroachments of the German Ocean. The point reserved on the trial before *Martin*, B., was, whether the defendants were bound to provide an available road.

Bliss for the Defendant; *Hall* in support of the prosecution.

The *Court* said, that the road, which ran to the beach, had been washed away and destroyed by natural causes without the fault of any body, and that the liability to repair no longer existed. The Defendants were therefore entitled to judgment, and an application for the costs of the prosecution was refused on the ground of want of jurisdiction.

Regina v. *Green.* Feb. 11, 1854.

INDICTMENT FOR EMBEZZLING AGAINST BAILIFF.—OBTAINING MONEY UNDER FALSE PRETENCES.

The prosecutor's bailiff, who was in the habit of receiving and paying moneys, had overcharged certain payments to laborers and brought in the prosecutor his debtor to an amount which he had paid. Held, *that an indictment would not lie for embezzlement but for obtaining moneys by false pretences.*

This was an indictment for embezzlement against the prisoner, who was bailiff of the prosecutor, and was in that capacity in the habit of receiving and paying moneys, and it appeared that he had overcharged in his accounts certain payments to harvest laborers amounting to 1*l.* 7*s.*, bringing in the prosecutor as his debtor for 2*l.* odd, which he had paid. The prisoner was found guilty on the trial at the Gloucester Sessions, subject to the point reserved, whether the offence amounted to embezzlement.

Tozer for the prisoner.

The *Court* said, that the prisoner should have been indicted for obtaining money by false pretences, and the conviction was accordingly quashed.

THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

MONTREAL COURT HOUSE TAX.

This unjustifiable tax has been the subject of so much discussion already, that it may appear almost too late for us again to touch upon it; but lately we met with a speech of Lord Brougham's in the House of Lords relative to a similar tax in England, which appeared to us to be so thorough and excellent an exposition of the absurdity of all such taxes, that we cannot refrain from giving the following extract. His Lordship said.

"It would be superfluous at this time of day, in the latter half of the 19th century, to enter into arguments to show the utter injustice and impolicy of any taxes whatever on law proceedings. Sixty years ago Mr. Bentham had demonstrated their entire and monstrous absurdity and iniquity.

"How would any one hear the proposition that a tax should be imposed, which a particular portion of the community—so many thousands, or tens of thousands,—should alone pay for the benefit of the whole? Yet that was the proposition of those who said that the suitors in the County Courts should singly pay a tax the use of which was beneficial to the whole community,—that use being the administration of public justice, a matter manifestly for the benefit, not simply of the individuals immediately concerned, but of the entire body of the nation. You single out a certain number of her Majesty's subjects, say 100,000 persons, or whatever the number representing the suitors in the County Courts might be, and you say that these 100,000 persons should pay the entire taxation imposed on the administration of justice, which is a thing concerning the entire community, the community accordingly deriving the full use of that benefit which the 100,000 individuals are compelled singly to pay for—compelled, that was to say, because in the assertion of a right, or in the repelling of a wrong, they resolved to put into operation that justice the administration of which, in their case, served to benefit all the rest of the community, who yet were permitted to avail themselves of that benefit without contributing to pay for it. Nor was even this the worst feature of the abuse; for the persons who were thus mulcted by the State were precisely those who, from the very operation of th suit in respect to which they were mulcted, were least able to bear additional burdens. At the very moment when all the other expenses of a suit were, perhaps weighing down a man—the professional charges, the cost of evidence, and similar necessary outlay—down came the Treasurer with a demand, by way of tax, exceeding in amount, not improbably—the whole of the charges for professional skill and labour. It was not enough that the suitor should

pay for the skill, or the want of skill,—that he should pay all the regular and fairly understood expenses of his case and its consequences. The Government must at that moment overwhelm him with a monstrous tax.

"There was much talk just now of the defences of the country—and heaven forbid a stone should be left unturned to render them complete!—but how would a proposition be received for casting on the frontier, or the southern coast,—say, the whole burden of these defences, leaving the inland counties free from any contribution to the object?—for making, in other words, the southern counties bear the whole cost of our militia, and our army, our navy, and our coast-guard, on the plea that they would immediately benefit most by the protection? Such a proposition would not be endured for a moment; yet this was the very thing, in another but not les monstrous manner, that you were now doing with the suitors in County Courts. They underwent the expense, the harassment, the vexation, the risk of litigation, by which the whole country mediately benefited, and for that reason they were made singly to bear a heavy burden of taxation besides,—a burden which operated not merely as a burden on the suitors for justice, but as an obstruction to the administration of justice itself.

"Let him put a case to his noble friend opposite. Suppose—which heaven forfend!—a riot should happen in the part of the town which he honoured with his abode, or that fire should be attempted to be set to his mansion, and that he should have occasion to call in the aid of the civil power, and then of the military force, to save his property, his life, from destruction—how would he, when the object had been happily so effected, relish the intimation that his property, his life perhaps, having been so preserved by the police and the soldiery, he must pay the bill of the police for attending, and of the military for attending? He would reply, that he paid his share, as a member of the community, of those taxes by which both police and military were maintained, in common with other purposes, for the protection of the subjects generally; and he would protest that it would be very hard upon him, in addition to all the alarm and anxiety, and perhaps loss he had undergone, to pay all the cost of the force which had been called in for his protection as one of those subjects. Yet that was a parallel case with the case of the suitor in the County Court. The noble lord, on this supposition, would have to pay, not only for the military and police who had aided him in his particular need, but for military and police with whom he had nothing to do, and of whom he had thought himself quit on paying his quota, as one of the community, to their maintenance. So the County Court suitor had to pay, not only for the Judge and the clerk, and the bailiff, and what not of the court in which his case was heard, but he had to pay a heavy tax for County Courts in all parts of the country, with which he had nothing to do.

"The access of suitors to the County Courts was obstructed by the fees which were levied upon them, and the money thus extracted or extorted was applied to defray the salaries of Judges and to provide the buildings in which suits were investigated. He conceived that it was

the bounden duty of a Government to provide for the administration of justice and to place the expenses of that administration of justice upon the community at large, instead of allowing it to fall upon suitors who could ill afford the payment. The Government ought not to aggravate the weight which the bare fact of being suitors imposed upon men in such a position, but they should throw the charge of providing for the administration of justice upon the community at large, because it was the duty of the Government to afford its subjects full protection in return for the allegiance exacted from them. He might be told that the plaintiff recovered the amount of the fees if the defendant could pay them, but in two out of three cases the defendant was unable even to pay the court fees. At the very moment when a man might, by various accidents or misadventures, or by the pettifogging, chicanery, or dishonesty, or malpractices of others, be suffering the greatest loss, what did the Exchequer do? Why, the moment when the suitor was complaining of the dishonesty of one party and the insolvency of another was the very time chosen by the Government for pouncing upon him, and subjecting him to still greater exactions, sharing, as it were, with knaves the fruits of their dishonesty. This system reminded him of the story of a certain man who 'fell among thieves.' A person who appeared to be passing accidentally found him lying exhausted upon the ground, and inquired, in sympathising tones, 'Pray what is the matter with you, sir?' 'Oh,' was the reply, 'a villain has run off with my purse and my hat.' 'Why,' asked the false Samaritan,' 'are you quite exhausted?' 'Yes, almost entirely.' 'Try, canit you move a little?' 'No, I cannot stir.' 'Oh, then, if that is the case, said the interrogator, 'I'll take your wig.' Now, that was just the conduct of the Government in this instance. They found the suitor plundered by the malpractices or insolvency of others, and they said to him—at the time he could least afford it—'Come, pay these fees; they are only 3*l* 11*s* 8*d*.; it is true that in the Court of Queen's Bench the same fees are only 17*s*., but they are 3*l*. 11*s*. 8*d*., here and you must pay."

His Lordship then proceeded to show that the tax of which he complained, amounted in many instances to 30 per cent on the sums recovered, and 17 per cent on the sums sued for. Here we have not to complain of so heavy a burden; but the object for which our tax is raised, is even more objectionable than that complained of by Lord Brougham. Here, a person who has been so unfortunate as to go to law, is subjected not only to pay a tax for the building in which his case has been heard, and his papers kept safe, but he is also obliged to pay for the accommodation, necessary for the trial of every malifactor who is brought to justice, and for his safe keeping while the trial is being proceeded with. Now allowing for the sake of argument, that the litigants in civil cases, during the next ten years should pay for the accommodation of the Courts of Justice, for three or four generations to come, by what rule should they also be condemned to pay for the housing of the Criminal Courts? It may be said that this part of the grievance is not worth mentioning; but that is a mistake. We venture to assert that the additional accommodation necessary for the

criminal business, adds at least one third to the expense of the building now in the course of erection. But it is unnecessary to dwell longer on a subject that is so simple. The broad principle, that the general administration of justice should be maintained at the public expense, appears to us to be unassailable.

COURT OF QUEEN'S BENCH.—OCTOBER TERM.

In a previous number of this Journal we gave a detailed account of certain misunderstandings between the learned Judges who presided at the Criminal Term held in the month of March last, and the learned Queen's Counsel who occupied for the crown, and which resulted in a rule for contempt taken by the Court against Mr. Driscoll, returnable on the 1st day of this term. Of the facts from which these misunderstandings arose, it is not necessary for us now to speak, as we have already sufficiently expressed our views on the subject; but there is one point, namely the legality of this rule, with respect to which we deferred speaking so long as it was still pending, but it being now adjudicated upon, we have no hesitation in giving expression to the views we have from the first entertained with respect to it.

Before proceeding to minute details it will be well first to establish what a contempt is—the different kinds of contempt—and the procedure usually adopted in punishing these offences.

Within the whole range of criminal law there is no offence more undefined than that of contempt. A creature of the common law, almost necessarily coeval with Courts of Justice, which it protects, it never has, in England, been subjected to legislative restraint. The power to-day which vests in every judge of the land, from the non-professional Justice of the Peace up to the Chief Justice of the Court of Queen's Bench, is as wild and as unrestrained, save by usage, as it was in the days of our Saxon ancestors* It, therefore, becomes a matter of very great importance to know what the nature of this power, so widely spread and unlimited is, and by what usages it has been kept in check, so that a means for the efficient working of institutions created for the protection of society may not, unobserved, be turned to the oppression of individuals. To take then the definition given of this offence, according to the spirit of the best authors who have treated of it, it is: *any act by which a person openly insults or resists the powers of a Court of Justice or of the Judges who preside there, or which plainly tends to create a universal disrespect of their authority.*

This offence, for the purposes of this inquiry, may be divided into two kinds: contempts committed out of the presence of the Court; and contempts *facie curiæ*, or those of which the Court has ocular testimony.

The procedure in the former of these kinds of contempt is, as soon

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* It would seem that the Superior Courts do not hold that the Sessions have a right to imprison for contempt for a longer period than the time of their sittings. V. Dickinson's Guide, 99 & 100, (Talfourd's ed.)

as the commission of the offence is brought within the notice of the Court, by affidavit or otherwise, either to serve a rule on the party complained of to shew cause why an attachment should not issue against him to bring him before the Court to answer the alleged contempt, or if a very heinous one, at once to issue the attachment. Upon the party being before the Court, *by attachment*, he is then furnished with interrogatories touching his criminality, and if his answers are straightforward and clear, he is usually dismissed; but it is competent to the Court, if unsatisfied with the answers, to proceed to take such other evidence in the matter as it shall see fit. Then follows judgment accompanied with such punishment as the Court shall think fit to impose.

The procedure in contempts of the second kind is naturally simpler, and more expeditious. Immediately on the contempt being committed it is the duty of the Judge observing it to put it of record, and thereupon the Court may at once proceed to punish the offender.*

In referring to the rule it is clear that the contempt, if contempt it can be called, of which Mr. Driscoll was accused was one of the second class; but what was the procedure? On the 27th day of March the offence is alleged to have taken place, and Mr. Justice Rolland left the Bench *without explanation*. No *record* was made, the Court undisturbed continued its sitting, and it was only on the 11th day of April, a fortnight after the commission of the alleged offence, that Mr. Driscoll had notice of the proceeding to be taken against him.

It is unnecessary for us to enlarge on the extravagance of such a procedure. The common sense of all men will at once suggest that if Courts of Justice are not under the necessity of taking cognizance immediately of contempts which take place in their presence, then they may defer to do so, not only for a day or a fortnight as in Mr. Driscoll's case, but for any time they please, and if so, then no man will dare set his foot within their precincts, for at no moment could he feel certain he was safe from the vindictive misconstructions of some vengeful judge, who might choose to convert some past expression, interpreted by a present look, into a contempt.

The law of contempts, when not checked and kept in reasonable bounds by the wisdom and moderation of English Judges, has been found, in some of the States of the neighbouring Republic, to be so dangerous to liberty that it has been defined by Statute as other offences. We hope that the imprudence of the Courts here may not force us to follow this example; but we cannot shut our eyes to the evils likely to arise from the perpetration of such acts of injustice as those directed against Mr. Driscoll, nor are we disposed to say that if repeated and persisted in, we should not be inclined to choose the lesser of two great evils and recommend that the law of contempt should be subjected to statutary interference.

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* We have drawn this *résumé* of the procedure in cases of contempt from so many sources, and the information is so scattered in the books, we have consulted that it is impossible to give exact references; but our readers will find our statements supported by the following authors: 4 Blackstone, 283-4, Hawkins, 273

Unfortunate as the precedent of last Term may be considered, we, however, console ourselves with the idea that the victory gained by the Bench over law and common sense, was not sufficiently decisive to incite the judicial prosecutors soon again to tempt public patience with another such flagrant act of tyranny. Bystanders could not fail to perceive that the learned author of the rule was only too well pleased to slip it through without exacting Mr. Driscoll's oath, thereby satisfying himself with no better evidence than that contained in the "violent," "uncalled for" and "unseemly disclaimer" of last term.

LIVINGSTON'S MONTHLY LAW MAGAZINE, NEW YORK.

We have received the August number of this publication. It contains the reports of thirty cases decided in the courts of various of the United States. The publication is well got up, and the cases reported in it are generally of practical utility, comprising insurance, patent law, railway, corporation, criminal and mercantile law cases.

In the number before us we notice, copied from 3 Indiana R. two cases involving the law of part performance of contract. They are headed thus: "Where A. agrees to do a specified thing, for which B is to make a specified compensation, and A. only performs his contract in part, he may recover for such part performance *pro rata*, subject to the deduction of special damages caused by his default. These cases were simple actions of assumpsit, though the parties had made their "written contracts." "The defendant," (it was said by the Judge in one of the cases,) "is answerable to the amount whereby he is "benefited on an implied promise to pay for the value he has received, "though no action can be maintained on the special contract. The "plaintiff is clearly in default in not having completed his contract in "the time and manner specified; and, therefore, he does not bring his "action on the agreement, but relies on a general count for work and "labor."

We know that judges and writers have held like doctrines,—yet we have never been able to approve them. We consider them radically unsound. The contract executory, we would make Plaintiff declare specially. The defendant's contract is to pay upon the works being perfectly executed and finished. Upon the principal point in the two cases referred to the best law is to be found in Kent's Comm., Vol. 2, p, 509, sixth edition. "With respect" (says Kent) "to part per-"formance of an entire contract for the sale and delivery of personal "property of a given quantity at a specified price and time, or for the "performance of certain labor and service, a delivery of a less quantity "than that agreed on, or a refusal or omission to perform the entire "labor or service, without any act or consent of the party, will not "entitle the party who has delivered in part, or performed in part, to "recover any compensation for the goods which have been delivered, or

"the service which has been performed. The entire performance is a "condition precedent to the payment of the price, and the courts can- "not absolve men from their legal engagements, or make contracts for "them."

Pothier, Louage, No. 406, seems to be of like opinion as *Kent*. In Lower Canada it would, probably, be held that the condition precedent precluded action. It is said that this is hard; but we say no. Engagements ought to be enforced. If a contractor be content to make his legal engagement in a particular way, *when he might have made it in any other*, let him bear the consequences. In any contract for works to be done the case may be provided for of part only of the works being done; and the remuneration to be made to the contractor, in such case, may be regulated. While there is such freedom, we confess that we cannot see the propriety, in a legal point of view, of considering the rule stern that in entire contracts, *say* for work, the entire performance is a condition precedent.

(From the London Legal Advertiser.)

MEMOIR OF THE LATE LORD DENMAN.

Lord Denman was the son of Dr. Denman, an eminent physician in London. His mother was an aunt of Sir Benjamin Brodie. He was born on the 23rd July, 1779. One of his sisters married Sir Richard Croft, and the other Dr. Baillie, the two leading physicians of their time. Thomas Denman went to Palgrave School, near Diss, in the county of Norfolk, then superintended by the celebrated Mrs. Barbauld, and her distinguished scholar often mentioned, that "he had received from that accomplished lady the rudiments of instruction and the first lessons of discipline." From thence he proceeded to Eton, at which eminent school he remained several years, until he entered St. John's College, Cambridge, where he graduated in 1800.

In 1806, he was called to the Bar by the Honourable Society of Lincoln's Inn, practised at the Common Law Bar, and selected the Midland Circuit for his career at the Assizes. Before his call to the Bar he married the daughter of the Rev. Richard Vevers. Whilst at the Junior Bar, he was much esteemed as an arbitrator and we recollect several important references before him.*

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*One of them was of an extraordinary character. The premises of a trader of the City of London had been burned down, and it was suspected that the fire was not accidental, and that the value of the property was enormously overstated. The man was tried for arson, the punishment for which was then certain death. He was acquitted, became bankrupt, and his assignees brought an action against the insurance company. On the trial coming on, Lord Chief Justice Gibbs advised a reference, and Mr. Denman was chosen arbitrator. After numerous meetings he felt compelled to decide against the claim.

Mr. Denman espoused the principles of the great Whig party, and entered Parliament for the borough of Wareham, at the general election of 1818. In the following year he was elected for Nottingham, for which place he continued to sit, to the great satisfaction of his constituents, until he became Chief Justice. In Parliament he warmly supported several reforms in the Law, as well for the removal of abuses in the administration of justice in the Civil Courts, as in the mitigation of the severities of the Criminal Law. He was also eminently distinguished in the great contest for the abolition of Slavery.

In the year 1820, the trial of Queen Caroline called forth all his impressive and dignified eloquence. Mr. Brougham was appointed her Majesty's Attorney-General and Mr. Denman her Solicitor-General. The distinguished ability shown by Mr. Denman in that celebrated trial, raised him highly in the estimation of the public for his moral courage and unbending firmness. The judgment, as well as zeal which marked his advocacy, must have essentially contributed to the issue of that great question. But, as might be expected, this opposition to the feelings of the King and his powerful ministry, placed a barrier against Mr. Denman's participating in the honours of his profession, to which his talents and standing at the Bar entitled him.

In the year 1822, however, the City of London, many of whose leading members had taken an active part in support of the Queen, appointed Mr. Denman to the office of Common Serjeant.†

At length, however, in 1828, when Lord Lyndhurst first became Lord Chancellor, to the credit of that distinguished lawyer and statesman, the barrier was removed, and Mr. Denman received a patent of precedence.

In 1830, when Earl Grey became Prime Minister, Sir Thomas Denman was promoted to the office of Attorney-General, which he held during the debates on the Reform Bill. Whilst he filled the office of first law adviser of the Crown, an application was made to incorporate the members of the Law Institution, and to him and Lord Brougham—then the Lord Chancellor—that Society is indebted for the liberal grant of its charter.

In November, 1832, upon the death of Lord Tenterden, Sir Thomas Denman was appointed Chief Justice of the Court of Queen's Bench, and received the honour of the peerage in 1834.

We deem it unnecessary in these pages to enter into the consideration of the exact rank in which Lord Denman should be placed amongst the eminent *Nisi Prius* advocates of his day and generation, such as Lord Abinger;—nor of the station he should occupy as a Parliamentorator, amongst men like Lord Brougham;—nor indeed shall we compare him with the judicial chiefs who preceded him on the Bench, or the eminent personage who succeeded him. Our duty rather leads us to consider his qualifications as a constitutional Judge and a Legislator.

† Mr. Alderman *Wood* (not Waithman, as stated in *The Times*,) the father of the present Vice-Chancellor, took a very prominent part in that memorable affair.

It is one of the advantages of a plurality of Judges over the "single seatedness" which Jeremy Bentham preferred, that whilst such learned and excellent Judges as Bayley, Holroyd, Tindal, and others may be perfect masters of the abtruse rules and technicalities of the profession, there are such men as Mansfield, Stowell, and Denman, who consider the general principles of Jurisprudence, and, where it can be done, safely adapt them to the changes and exigencies of society. A man may be a wise and excellent Judge, though not an acute special pleader; and in these days a profound knowledge of the ancient and deep parts of our laws is not so essential as it was in the time of Lord Eldon and Lord Tenterden.

We gladly extract from the able columns of *The Times*, the following judicial character of Lord Denman:—"As a Judge no man ever took a loftier view of its duties to society. To quote but one exemple:—the conduct of the Court in the difficult case of *Stockdale* v. *Hansard*, when it was directly assailed by one branch of the Legislature, is a memorable instance of the exercice of that constitutional power which enables our Judges to interpose the authority of the law against the arbitrary pretensions of the most powerful body in this realm, and to combat privilege in the name of justice. 'Most willingly would I decline,' said Lord Denman, in giving judgment on the occasion, 'to enter upon an inquiry which may lead to my differing from that great and powerful assembly (the House of Commons). But, when one of my fellow-subjects presents himself before me in this Court demanding justice for an injury, it is not at my option to grant or to withhold redress. I am bound to offer it to him, if the law declares him intitled to it. Parliament is said to be supreme. I must fully acknowledge its supremacy. It follows then, that neither branch of it is supreme when acting by itself.' In those few words, and in the judicial power of enforcing that truth, lies the supreme guardianship of the liberties of England."

"Lord Denman lived the life of a reformer of abuses, and an enemy of all that in his judgment clouded the honour or impaired the public utility of our institutions. His hatred of Negro Slavery in every form rose to a passion, for he stood armed against cruelty and injustice, and in the wretched fate of kidnapped Africans and degraded slaves, he beheld the united and accumulated evils and wrongs which have most degraded humanity and profaned religion. He powerfully contributed to the furtherance of those reforms of the Criminal Law which Sir Samuel Romilly had commenced, and which Lord Denman brought to the test of his own judicial experience. To the cause of toleration and freedom within the boundaries of law, he at all times gave his hearty support, and in all the undertakings set on foot in our day for more extended popular education, for the diffusion of useful knowledge, for the reformation of criminal offenders, and for other acts of enlightened charity he readily bore his part."

"For 18 years he filled the honoured seat of the Chief Justice of England, and, if any men excelled him by the vivacity of their genius or the acuteness of their intellect, none certainly surpassed, or perhaps

equalled him, in the moral dignity which gave an appropriate and additional lustre to his office. The personal aspect and outward bearing of Lord Denman in the administration of justice, were strongly impressed with those moral qualities which he displayed in all the duties of life, and we cannot but bear testimony to his unflinching rectitude of purpose, his love of truth, his sincerity and simplicity of character. His extreme benevolence and humanity were the fittest ornaments of the chief legal guardian of the public morals, and these qualities deserve to confer lasting honour upon his name."

"His closing years, though afflicted with severe illness, were serenely devoted to that contemplation which is the worthiest termination of human life—to those acts of kindness which endear the memory of the departed—and to the exercises of religion which anticipate the final change. We rank him not with the greatest, but with the worthiest of our contemporaries, and the life he led affords, in our judgment, a better example to those who follow him than that of more eager and impetuous aspirants after power and fame."

His lordship resigned his high office in 1850, and died at Stoke Albany, in Northamptonshire, on the 22nd September last, aged 75.

An admirable bust of his lordship by Mr. Christopher Moore, has been placed in the Hall of the Incorporated Law Society.

We have availed ourselves in this memoir of some of the eloquent passages which appeared in *The Times*. The biographical facts stated in that journal are remarkably accurate, except on two or three points. It seems not to have been known to the writer that young Denman, after leaving Mrs. Barbauld's school, went to Eton for many years. There is also a mistake in describing the ladies who married Sir Richard Croft and Dr. Baillie as the sisters of Dr. Denman (the father of the Chief Justice). They were his daughters, sisters of Lord Denman.

DISTRICT OF THREE RIVERS.

We learn from the daily papers, that Three Rivers has had the honor of being chosen as the scene of the first human sacrifice that has been offered up to appease the outraged majesty of the law for the last fifteen years in Lower Canada. On Friday, the 3rd February, Theberge was executed for the murder of Madame Gauthier, and it must be gratifying to the eulogists of the death penalty to learn, that an immense concourse of people was assembled on the occasion to profit by the moral lesson, which it is the principal object of this mode of chastisement, to inculcate. We cannot, however, but laud the discretion of our daily contemporaries in not indulging the prurient curiosity of, probably, a great portion of their readers in the fullest details of the confession, last speech and dying words of this criminal hero, according to the usual practice on such occasions.

PERIODICALS.

Since the appearance of our last number, we have received several numbers of Livingston's Monthly Law Journal, New York, the last number of which (No. xi.) contains a long article against the Usury Laws. It is the opinion of the learned editor, that the operation of the Usury Laws in the State of New York has had for many years a prejudicial effect upon its commercial movements; thus adding another testimony to the bad policy of keeping up this unnatural restriction on the circulation of money. We hope soon to see disappear the last shred of the Usury Laws with which we are still troubled in this Province.

We have also duly received the American Journal of Insanity, Utica, the Montreal Medical Chronicle and the Law Reporter, Boston. Each number of the Law Reporter contains notes to one or two leading cases, carefully copied from English Reports, in which students of criminal law will find a great deal of interesting and useful information.

(From London Legal Advertiser.)

CROWN CASES RESERVED.

Regina v. *Hewgill*, clerk. Feb. 11, 1854.

CONVICTION FOR OBTAINING MONEY UNDER FALSE PRETENCE OF "ORDER."—WHERE A "LETTER" HAD BEEN PRETENDED.

On the trial of an indictment against a curate for falsely pretending he had received an "order" from his vicar for the payment of his quarter's salary, and upon which he had obtained 15l., it appeared that he had stated he had received a "letter" from his vicar for such purpose. The conviction was confirmed.

This was an indictment against the Curate of Crofton, Titchfield for falsely pretending to a Mr. Walters that he had received an *order* from his vicar on a Mr. Layton, for the payment of his quarter's salary amounting to 25*l.*, from Mr. Walters. It appeared on the trial at the Hampshire Quarter Sessions, that the prisoner had stated he had received a *letter* from his vicar requesting Mr. Layton to pay the 25*l.*, and that he had called on Mr. Layton who was ill, and said he should therefore be obliged to Mr. Walters to let him have the money—whereupon he had obtained 15*l.* The prisoner had received no letter, nor was any salary due, and he was convicted, subject to a point reserved whether the variance was fatal.

C. Saunders for prisoner.

The *Court* said, that the conviction must be affirmed.

Regina v. *Carlisle and another.* April 29, 1854

INDICTMENT.—FALSE REPRESENTATIONS.

S. had sold a horse to the prisoner B. for 39l., but had been induced by him and the other prisoner C. to take a less sum by falsely representing the horse to be unsound, and that B. had consequently sold it for 27l. A conviction for such offence was affirmed.

It appeared from this indictment that a Mr. Simpson had sold a horse to the prisoner Brown for 39*l.*, but that he and the other prisoner Carlisle had induced Mr. Simpson to take a less sum by falsely representing the horse to be unsound, and that Brown had in consequence sold it for 27*l.* The prisoners were convicted.

Whigham now contended the indictment did not disclose any offence.

The *Court*, however, held, that the conviction must be affirmed.

Regina v. *Harris.* April 29, 1854.

INDICTMENT FOR EMBEZZLEMENT.—MONEY NOT RECEIVED AS SERVANT OF PROSECUTOR.

A prisoner was appointed by the Magistrates miller in the county gaol, and was paid weekly out of the county rates. It was his duty to take tickets from persons bringing grain to be ground, and to receive money for the same. It appeared he had ground grain without a ticket, and had not accounted for the money received. On an indictment against him as servant of the inhabitants, or of the clerk of the peace, for the embezzlement of their money: Held, *that the conviction could not be supported.*

This was an indictment against the Defendant as servant of the inhabitants of the county of Worcester, or of the clerk of the peace, for the embezzlement of their money. It appeared that the prisoner was appointed by the Magistrates miller in the county gaol, and was paid weekly out of the county rates, and that it was his duty to take tickets from persons bringing grain to be ground and to receive money for the same, and that he had not accounted for moneys received for grinding grain taken in without ticket.

Selfe in support of the conviction.

The *Court* said, that the prisoner had taken in grain without ticket, showing his intention to make an improper use, and for his own benefit, of the machine intrusted to him. He had, however, no right on behalf of his master to grind any corn except such as was brought to him with a ticket, and the money was therefore not received on his master's account, and the conviction for embezzlement must be quashed.

THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

CRIMINAL LAW.

We are always disposed to look with favor on amendments, or what purport to be so, when applied to any system that is palpably faulty; but not so when it is proposed to interfere with the working of an institution so nearly perfect as our criminal law. We are ready to admit that the great English Law Reformers have done something to simplify criminal procedure, and the humble imitation now before us, in the former of these Bills,* we admit, follows pretty much their example; but we are disposed to doubt whether the advantages gained by this simplification will compensate for the risk of the change. In defence of Lord Campbell's last Act, (14 & 15 V. c. 100,) it is contended† that from the technicalities required under the old system, it was not uncommon for a guilty person to escape, and that a new trial did not always ensure conviction. This we admit, but it is also true that all the technicalities of the old system were not always sufficient to secure the innocent from an incorrect verdict. We can readily believe that Lord Campbell's act has not decreased convictions; but until we are convinced that some system has been discovered so perfect that no innocent man can ever escape and no guilty one ever be punished, as a sturdy old veteran, who had unbounded faith in all military institutions, once informed us was the case in Courts Martial, we shall not be disposed to look with much favor on such modifications as those proposed by Mr. Cameron.

But however popular may be this pretended reform, there is one section of this Bill, which we should think would hardly meet with much sympathy. We allude to the 38th Section, by which it is proposed to enact that "any person being one of Her Majesty's Counsel, learned in the law *in this Province*, may be an associate Justice of any such Court (Courts of Assize and Nisi Prius, Oyer, Terminer and General Gaol Delivery, sitting in Upper Canada) for the despatch of civil and criminal business at any county or place, or upon any Circuit in Upper Canada, and any such person shall and may be, and act as a Judge of such Courts, as fully, to all intents and purposes, as if he were duly commissioned as one of Her Majesty's Judges of the said Superior Courts."

* Bill to amend the Criminal Law of this Province. *Hon. J. H. Cameron.*
Acte pour amender et consolider les lois relatives aux crimes de faux et de supposition de nom. Mr. Felton.

† V. Preface to Lord Campbell's Acts, by *C. S. Greaves, Esq., Q. C., London,* 1851.

In a word, that any number of Queen's Counsel it may please the executive to name, may besiege any of the Courts of Law in Upper Canada, and there out-vote the regularly appointed Judges of the land.

We conjure Mr. Cameron, ere he renders himself instrumental in passing such a measure, to pause and consider what would be the consequences of an invasion of a new levy of some sixteen or twenty newly caught Queen's Counsel from Lower Canada, determined to sit on a case perhaps involving an intricate question of real property.

Amid this rage for law reform, we are also menaced with a bill introduced by the learned prosecutor for the Crown at Sherbrooke; which surpasses anything in the shape of legislation we have ever had the good, or rather ill fortune to read. To describe it minutely would not be easy, but its principal characteristic is that it endeavours to convert into a felony the most innocent actions of every man's life, that it presumes guilt and leaves innocence to be proved. As an instance of this, we may take the 14th and 19th sections, by which it is proposed to enact that if a person is aware that there is some forged promissory note, letter of credit or bank note lying in some one of his open fields, he is liable to being convicted of felony unless he can prove how it came there. It is not to be denied that, in the locality in which the learned legislator has acquired his professional experience, the crimes against which the Bill now under our consideration is directed are only too common; but this sort of rough legislation is not found to produce the effect intended, and for the simple reason, that by its operation innocence and guilt are so nearly allied, that the line of demarcation is lost, juries cannot be got to convict, or public opinion to blame them for not convicting.

ROMAN LAW.

Introductory Lecture on the Roman Law, delivered by Frederick W. Torrance, Esquire, in connection with the Law Faculty of McGill College, Montreal, in the Hall of the Court of Appeals, Montreal, on the 13th January, 1854.

"Comme si les grandes destinées de Rome n'etaient pas encore accomplies; elle regne dans toute la terre par sa raison, après avoir cessé d'y regner par son autorité."—D'Aguesseau, Œuvres, 1, 157.

It having been committed to my charge to deliver a course of Lectures on the Roman Law, it is fitting that I should introduce the subject with such observations as shall tend to bring it home to our understandings. By this means, the attention of the hearer will be awakened, and he will enter upon the course with his feelings interested and his mind engaged. In pursuance of this plan the topics which naturally present themselves for our consideration in an introductory Lecture, are the national characteristics of the Ancient Romans—their national policy—the characteristics of their famous Jurisprudence—and the advantages to be derived from its study, by the man of education and the Lawyer.

The laws of a nation form the most instructive part of its history. If a man would learn much of the genius and habits of a people, and be instructed by the events of its history, he should study its laws.

There is not in the history of the world to be found a subject of more interesting and profitable contemplation than is presented by the rise, progress and downfall of the Ancient Roman Empire,—whether we consider the space it has occupied in the civilization of our earth, during the time of its existence, or the influence it has since exercised on the growth of modern civilization.

The extent and grandeur of the Roman Empire far exceeded that of any other people of antiquity. It comprehended the fairest parts of the then known earth; and so majestic were its proportions, that its greatest historian ends his memorable history with the observation, that its decline and fall presents the greatest, perhaps, and the most awful scene in the history of mankind.*

It measured in breadth about 2000 miles from the wall of Antoninus and the northern limits of Dacia, to mount Atlas and the tropic of Cancer,—in length about 3000 miles from the Western Ocean to the Euphrates;—embracing the fairest portion of the temperate zone; it was supposed to contain 1,600,000 square miles, for the most part of

* Gibbon's Decline, v. 6, p. 541, cap. LXXI.

fertile and well cultivated land, covered by a population of 120,000,000, a number more than half the present population of the whole of Europe.*

This ancient people must ever remain the most attractive and profitable subject of study, and its literature form the basis of every enlightened system of education. The languages of Modern Europe are more than half formed from the language of Ancient Rome, but their obligations to it, are not greater than the obligations of their literature to her literature.

Her laws also have been in great part incorporated into the laws of modern nations both in Europe and America, and it is not too much to say that full grown manhood does not owe more to the studies of youth than does modern civilization to the civilization of ancient times.

The Roman *or* Civil Law forms the basis of every existing system of Commercial Law. It is believed to have constituted the body of the ancient Common Law of England, in which country as a Province of the Roman Empire the Roman Jurisprudence, polity and government, existed for upwards of three centuries and a half, and have left many traces behind. In Germany, Bohemia, Hungary, Poland and Holland, it has formed the Common Law. In Scotland for a time, it formed the only system of jurisprudence, and its Advocates were for a time examined on the Roman Law alone. It is taught and obeyed in France and Spain. It is law in the Islands of the Indian Ocean. It was introduced into the Island of Ceylon by the Dutch. It governs the New States in Spanish America. It flourishes on the banks of the Mississippi—in the State of Louisiana. It is taught and studied on the banks of the St. Lawrence by our own firesides;—proving the truth of the striking observation of the French Chancellor, D'Aguesseau, that "the grand destinies of Rome are not yet accomplished; she reigns throughout the world by her reason, after having ceased to reign by her authority."†

How can we then explain the mighty influences of Roman civilization? Among the causes, I would mention these three;—the immense duration of the Roman Empire,—the national characteristics of the Romans; their national polity.

When we consider the duration of this Empire, we find it presents a very great contrast in this respect to other nations.—The Athenian

* Gibbon's Decline, vol. 1, p. 32.—"Nothing conveys a juster notion of the "greatness of Roman history than those chapters in Gibbon's work, in which he "brings before us the state of the east, and of the north, of Persia and Germany, "and is led unavoidably to write a universal history because all nations were mixed "up with the greatness and the decline of Rome. This, indeed, is the peculiar "magnificence of our subject, that the history of Rome, must be in some sort, the "history of the world; no nation, no language, no country of the ancient world "can altogether escape our researches if we follow on steadily the progress of the "Roman dominion, till it reached its greatest extent."
Arnold's History of Rome, p. 68, cap. XL.

† "Comme si les grandes destinées de Rome n'étaient pas encore accomplies; elle regne dans toute la terre par sa raison, après avoir cessé d'y regner par son autorité."—D'Aguesseau Œuvres, 1, 157.

power lasted but a few years, the empire founded by Alexander the Great fell to pieces with the death of its founder. We know little of the dynasties of the famous Babylon and Nineveh so remote is their history. In our own time the power of Napoleon the Great did not last his lifetime.

Far different were the fortunes of Imperial Rome. The Roman power was not the creature of a day. It was the steady growth of twelve centuries of progress, and its durability was proportioned to the tardiness of its growth and the solidity of its materials.

It has been remarked that the twelve vultures which Romulus beheld on the Palatine Hill were emblematic of the twelve centuries which beheld the existence of the empire of the west; and it required a thousand years more of corruption and decay to extinguish in the east this famous empire, which, regenerated by the genius of Constantine the Great, found in the wealth and incomparable situation of its metropolis, Byzantium, the modern Constantinople, some counterpoise to the effeminacy of Oriental manners and the fierce energy of the Scythian hordes.

I shall now say a few words on the national characteristics and national polity of the Romans, for, in contemplating the career of a people called to such exalted destinies, the national characteristics and national polity will suggest the chief causes of their wonderful fortunes and wonderful influences.

Among the striking characteristics of the Roman people, were the love of dominion—the love of conquest—a haughty and indomitable spirit. Hence the extension of the Roman power by war. This would appear to be the essence of the history of Rome—the carrying out of the purpose of its existence. And contemplating the fulfilment of this purpose, we are struck by the steady and solemn march of the Roman power. To use the beautiful language of an anonymous writer "Amid the twilight of Pelasgic and Oscan fable the foundations of the "Roman forum are laid. Then the narrative begins. First are seen "kings warring with petty tribes within sight of the walls. A "dominion gained by the last and most powerful of these kings is lost "by the revolution which makes the city free, is once more regained, "extended, carried by a long line of consuls, a long series of triumphs "to the Alps on the north, to the Sicilian Sea on the south. War follows war;—province is added to province;—an ever increasing circle owns the great city's sway; until, at last, fire worshippers of the "east receive their monarchs from the Roman Senate, and Druidical "Chieftains from Gaul and Britain are led in triumph up the sacred "way."*

We know that there was a temple at Rome erected and dedicated to the God Janus, the gates of which were open in time of war and closed in time of peace, and we are told that during the long period of seven centuries—so unceasingly were the ancient Romans engaged in wars—this temple was closed but thrice.

* Times, Oct. 18th, 1853.

Nor were these wars little wars. Frequently was the republic brought to the brink of ruin—and only saved by the obstinate determination of the people and their unswerving faith in their destinies. Terrible were the reverses which they met with again and again, but these reverses seemed only to develope their strength and to be among the direct causes of their dominion. The struggles with the Samnites and Etruscans were struggles for dominion, or rather for existence as a nation. We see the city taken and burnt by the Gauls, and only the Capitol saved by a miracle of good fortune. But notwithstanding all, —their progress is still onward. Again in the last coalition of the Italian States against Rome, we find Pyrrhus, the greatest prince and general of Greece called over to head it; and even in those early times so noble was the appearance of the great city, and so majestic the port of her inhabitants, that Cineas, the Ambassador of that king, carrying back his report to his master, likened the city to a temple, and her Senate he described as an assembly of kings.*

Then we have the tremendous contest with Carthage, and the three Punic wars, in the second of which, Rome, unbending under reverses, refuses to treat with Hannibal at her gates, and with this famous general within her territories for seventeen years, heroically carries on a contest with her enemies abroad, and eventually triumphs. Rome was no more assailed at home, but we see her engaged in another tremendous struggle and suffering other tremendous reverses in the collision with Mithridates the Great, ending, however, like the former ones, in the signal triumph of the Great City.

Another very striking characteristic of the ancient Romans was their appreciation of their Jurisconsults. They were jurisconsults by disposition.†

I am here reminded of a remarkable passage in the famous speech of Edmund Burke on conciliation with America, where he describes the American character and speaks of their addiction to legal studies. He says, "in no country perhaps in the world is the law so general a "study. The profession itself is numerous and powerful; and in most "provinces it takes the lead. The greater number of the deputies sent "to the congress are lawyers. But all who read, and most do read, "endeavour to obtain some smattering in that science."‡

This passage would seem well to describe the ancient Romans.

We are all familiar by our reading of Roman history with the relation of patron and client. The early jurisconsults had long trains of followers, and their business consisted both in advising and acting on

* "Conceive what that city was, which Cineas likened to a temple; what was "the real character of that people, whose senate he described as an assembly of "kings." Arnold's Rome, p. 362, cap. XXXIV.

† Arnold's Rome, Chap. VI, p. 26. "The most striking point in the character of "the Romans, and that which has so permanently influenced the condition of man-"kind, was their love of institutions, and of order, their reverence for law, their "habit of considering the individual as living only for that society of which he "was a member."

‡ Burke's Wks., 2, p. 36.

behalf of their clients gratuitously. Their poets and satirists abound in allusions to this custom and Cicero informs us that they gave their advice or answers either in public places which they attended at certain times, or at their own houses, and not only on matters of law but on any thing else that might be referred to them.

Long before the time of Cicero the study of law had become a distinct branch from the study of oratory, and a man might raise himself to eminence in the state by his reputation as a lawyer, as well as by his oratorical power or military skill.*

Mr. Lerminier, lately a professor in the College of France at Paris, in a work published some twenty-four years ago on the History of Law, notices the prominent place held by the science of jurisprudence in the Roman mind in the following terms. "It is now time" he says "to "ask what was the position held by the science of the Law in the "Roman mind. In the East, law does not exist under precise and "individual forms. In Greece, it has more prominence; but ruled "over by religion and the State, it has not yet attained to indepen-"dence and therefore not to originality.† It is at Rome, that for the "first time, law is altogether separated from foreign elements, and "makes itself individual and puissant. Rome is not the World of Art "and of Science. Far from that, the love she exhibited for the "sciences and arts of Greece was a sign of decay for her genius. "Rome has not any more the universal and absolute genius of religion. "She is solely occupied with the State—with the citizen, with politic-"al and civil relations, in a word, with law; to such a degree that we "must not say that law has at Rome a suitable position, but that "Rome is truly the world of law "*tellement qu'il ne faut pas "dire que le droit ait à Rome un rang convenable, mais que Rome "est veritablement le monde du droit.*"‡

In the remarks already made, there is much from which we may infer the powerful influence of Roman civilization on the civilization of the world. But the author I have just now quoted has some striking observations on the intellectual influence and duration of the Roman Jurisprudence, which throw additional light on the genius of the Roman people. I translate. He asks, "How can we explain the intellectual power of the Roman jurisprudence and its political duration?" He answers, "In going back continually and unceasingly to the contemplation of the genius of Rome; in burying ourselves in the study of Roman originality, in order to snatch from her the secret and the reason of this inimitable legislation. The Roman, severe, austere, avaricious, of a positive spirit, was passionately attached to his origin and his national peculiarities; a zealous follower of the customs of his fathers, and of their ancient constitution, he never broke the chain of

* Smith's Ant., p. 537. *Verbo*, Jurisconsulti.

† I would add that Adam Smith in his wealth of nations remarks that Law did not attain to the dignity of a science in any Greek Republic. Smith's Wealth, B. V., Cap. 1.

‡ P. 336, 2nd edit.

years; always boundto the ancient traditions, the new ideas; carried in his designs, an indissoluble continuity, and in their execution an immoveable constancy. Hence, the statesmen, the men of political genius, the great jurisconsults. Rome has, eminently, political genius. I do not say, social genius, for she trampled under feet the nations, and to her triumphs she harnessed kings. But the idea, the sentiment of the State, of right, of law, of the constitution, of what is national, paternal, preoccupies and fills her; for her the arts, philosophy, the pleasures of thought, are only an amusement, and a distraction. Abroad, she displays an implacable perseverance in bringing to a successful issue her designs: neither reverses prostrate, nor artifices deceive her; she subdues all, she penetrates all: what she has resolved, she always brings to pass. It is in vain that Carthage shines conspicuous, and strengthens herself:

Divas opum, studiis que asperrima.

Neither her commerce nor her riches will save her; in the midst even of the victories of her Hannibal, there is a presentiment of her ruin, and she would seem always to see hovering over her the Roman Eagle fascinating her with his glance, until he causes her to fall into his inevitable grasp. Compare the Grecian spirit to the Roman genius: you will find in the Grecian statesman, if you except the great Themistocles, Pericles the Olympian, and a few Spartans, something trifling, without consistency, futile, characters which do not hold. The proud Roman was not mistaken in it, and said "*Graeculus quidam*"* In Greece, at Athens, people thought more of the ideas of Plato, and the verses of Aristophanes than of the Peloponesian war; but at Rome, you saw, walking in the forum grave and austere men who only thought of maintaining their rights at home, and abroad, of conquering the world.†"

So it was Virgil truly conceived the genius of his nation when he pictured to us Anchises addressing Aeneas, the ancestor of the Romans, in language which has been often quoted and admired.

"Excudant alii spirantia mollius aera;
Credo, equidem, vivos ducent de marmore vultus;
Orabunt causas melius, coelique meatus
Describent radio, et surgentia sidera dicent.
Tu regere imperio populos; Romane, memento;
Hae tibi erunt artes; pacis-que imponere morem;
Parcere subjectis; et debellare superbos."

Aeneides, VI.. 848-854.

Thus paraphrased by Dryden.

Let others better mould the running mass
Of metals, and inform the breathing brass,
And soften into flesh a marble face;
Plead better at the bar; describe the skies,
And when the stars descend and when they rise.

* Juvenal.
† Pp. 20-22.

> But Rome! 'tis thine alone, with awful sway,
> To rule mankind, and make the world obey,
> Disposing peace and war thy own majestic way;
> To tame the proud, the fettered slave to free;
> These are Imperial arts, and worthy thee."
> Dryden's Æneid, v. v. 1163–1177.

Having now these national characteristics of the Romans in our recollection, it is not difficult to imagine what their national policy would be. I believe the mission of the Romans to have been to reform and renovate the ancient world—to substitute a Roman—say rather a world-wide civilization for the imperfect civilizations of half barbarous nations;—above all, if we may indulge in speculation, the purpose of its existence was, to prepare the world for a heaven-sent faith, which should sweep away the innumerable fantastic forms of human creeds.

The policy of the Romans was pursued with unswerving resolution. We hear much in these days of the restless, subtile and encroaching spirit of the Czars of Russia, and of the religious scrupulosity with which they pursue the sagacious counsels of Peter the Great, and push their conquests, south, east, and west. The policy of the Russians gives a faint conception of the domineering and astute policy of the Romans.

It has not unfrequently happened that, when a people has been vanquished and reduced to subjection, the conquerors have left to them the free enjoyment of their civil rights and laws. Far otherwise did the Romans. When a tract of country was made a Roman Province, they determined to make every thing about it Roman. The Latin language was introduced into the various civil and judicial acts, rendering indispensable to the natives the study of this language. The tenure of the land gradually received an Italian organization. The superior classes experienced and even sought a transformation which tended to their interests and flattered their taste. The emperor by a wise and judicious policy attached to the Roman interests the distinguished persons of the Provinces, laid open to them the avenues of dignities and even made them members of the Senate.

Roman literature became their study, and when the invasion of the barbarians severed France from the Roman power, the ancient inhabitants of the country had altogether disappeared, and there were only Romans to be found; and we have indeed indubitable proof long before this event, that the provinces had been assimilated to Rome, when all the subjects of the Roman Empire had accorded to them the famous right of Roman citizenship, of the communication of which in earlier times Rome had been so jealous and so chary.

In the subject provinces, the Roman municipal system—the Roman laws—the Roman magistracy—in their entirety were introduced. Roman judges appointed by the emperor and removeable at pleasure, administered the laws—and the emperor at Rome himself constituted the

* Giraud, 1, 76, 7.

highest court of appeal.* We are here reminded of the memorable incident in the life of the Apostle Paul; when his life was sought by the fanatical zeal of his Jewish persecutors, he saved himself from their fury and in a moment ousted the Roman proconsul of his jurisdiction by a solemn appeal to the justice of Cæsar.

A writer in the Paris *Revue de Legislation* of last year† describes in graphic language, the effect on Gaul of its conquest by the Romans "Let us mark above all," he says, "that the Roman conquest had the effect of insensibly and gradually depriving Gaul of everything that could make up her nationality. The barbarians after their invasion did not impose their own laws on the vanquished; Visigoths, Burgundians and Franes all admired the system of personal laws found in the Roman Jurisprudence, whether because they were wanting in ambition or because they obeyed unconsciously that inward feeling of admiration and respect which civilization always inspires in barbarians. But the Romans had proceeded in a very different manner; their astute and ambitious policy consisted in extending their rule by their language, by their manners and above all by their laws. Never has there been another civilization more encroaching and more absorbing than the Roman civilization. "*Aucune autre civilisation ne fût plus envahissante et plus absorbante que la civilization Romaine.*"

The testimony of the philosophic Guizot in his lectures on civilization in France is to the same effect.

"The Roman civilization," he says, "has had the terrible power of extirpating national laws, manners, languages, religions; of assimilating and bringing to one form all the Roman conquests."‡

I shall now make a few remarks on the characteristics of the Roman Jurisprudence. It affords unquestionably the example of a more complete and self connected system than the Jurisprudence of any modern nation can exhibit, and we need only consider the large and comprehensive views of the science entertained by the Roman jurisconsults themselves, to have some insight into the causes of its wonderful excellence and exalted position.

The definition § which the Roman Jurisconsults gave of Jurisprudence is the knowledge of things divine and human, in order to distinguish the right and wrong. One is reminded here of the famous definition of law by Dr. Samuel Johnson, as "the science in which the greatest powers of the understanding are applied to the greatest number of facts," and the noble observation of Edmund Burke comes to our mind when he speaks of law as "The Science of Jurisprudence, the pride of human intellect, which, with all its defects, redundancies and errors, is the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns."

* Histoire du droit Francais au moyen age. Giraud, Vol. 1, p. 91.
† A.D. 1853, p 14.
‡ 11th Lecture, 1, p. 366.
§ Jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia. Inst. 1. 1. 1.

And comparing the modern with the ancient definition of Jurisprudence, we are struck with the thought that the wisdom and experience of the wisest of moderns has added nothing to the noble conceptions of the old Romans.

It is indeed a memorable truth that the professors of law in ancient Rome were grand masters in moral as well as legal science,—they drank deep of the fountains of Grecian philosophy—the philosophy of Plato and Aristotle and Zeno. Mr. Lerminier, the author I have already quoted, observes, "The Stoics, appearing in the heart of the republic at the "moment when she was about to fall, instructed the jurisconsults, and "it is to this alliance of the porch and the forum that we must attri- "bute this philosophic jurisprudence, this legislative style, which em- "braces in forms so severe, the decisions of a strict justice and an "inexorable reason."*

But it was not from philosophy alone that the Roman jurisconsults drew their marvellous sagacity. One is struck with the immense variety of their accessary accompliahments. They were deeply read in all human lore. They laid under contribution human genius in its every phase,—Historians, Orators and Poets; and in their writings are found quotations from such Grecian authors as Homer, Hippocrates, Plato, Demosthenes.†

Nor were they oppressed with an unusual weight of learning. The native impulses of their genius have had the fullest developement.

The affinity between law and philosophy in the Roman mind is said to have given a remarkably scientific cast to the cases and opinions of the Roman jurisconsults, who have frequently been likened (for this reason perhaps) to mathematicians. Kant, an illustrious German philosopher, remarks on the method with which the Roman jurisconsults develope their ideas, and Leibnitz a great mathematician as well as philosopher, who, in the opinion of men of science abroad, disputes with Newton some of his most illustrious discoveries, declares that he knows nothing which approaches so near, to the method and precision of Geometry as the Roman Law.‡ The rules of law—*regulæ juris*, (as they are called,) contained in the last Book of the Pandects of Justinian are famous for their sententious wisdom. "Parsimonious in words—prodigal of meaning," it has been remarked of them that they are the greatest body of condensed reasoning to be found in uninspired writings.

The Roman law is singularly free from technicalities. This may have arisen in some measure perhaps from the simplicity of society when the fundamental principles of the Roman law were developed, and the jurisconsults of all nations have paid their homage to its marvellous beauties by uniting to distinguish it as "the system of written reason," as "the Civil Law."§

* P. 19.

† Hugo.

‡ Vide Hugo, Droit Romain.

§ "The law of Rome has the distinguished honor of vindicating to itself the "exclusive title of the Civil Law."—Anonymous. Vid. Halifax, Prel.

I have already alluded in my remarks on the national polity of the Romans, to the rule which gave the inhabitants of the different provinces an appeal to Rome from the decisions of the local Courts. It is worthy of observation that it may have been the immense variety of cases submitted to the jurisconsults of Rome by way of appeal from the many divisions of this vast empire, which communicated to the decisions of the Roman law the spirit of comprehensiveness and breadth for which in all ages they have been celebrated. It was only natural that the efforts of the jurisconsults of Rome should be directed to reduce to one harmonious system the jurisprudence of the many different Provinces of this vast empire, and decide according to strictly equitable and rational principles, all causes submitted to them, whether from Gaul or Britain—Asia Minor or Egypt.* Add to this as another cause of the excellence of the Roman law, a cause to which I have already adverted, the distinguished place in which this science was always held in the Roman world.

The above observations will suffice as regards the matter of the Roman jurisprudence. But a very remarkable characteristic of this system to which I have not yet adverted, is its *style* and *language*. The purity of the language of the Pandects has always been commended; and so perfect and elegant in style, are they held to be, that it has often been remarked that the Latin language might be restored from them alone though all other Latin authors were lost.

A modern French writer alluding to this quality of the Roman law, says, "its texts are the master pieces of the juridical style, and never "more may law be written as it was composed under the pen of "Ulpian and Papinian. One would say the method of Geometry ap-"plied in all its rigour to moral speculations."†

David Hume in his history of England,‡ adds his testimony.

"It is remarkable," he says, "that in the decline of Roman learning, when the philosophers were universally infected with superstition and sophistry, and the poets and historians with barbarism, the lawyers, who in other countries are seldom models of science or politeness, were yet able by the constant study and close imitation of their predecessors to maintain the same good sense in their decisions and reasonings, and the same purity in their language and expression."§

I will now suggest a few of the advantages to be derived from a study of the Roman Jurisprudence by the man of education and the lawyer. I can do it but cursorily, in the limits of a lecture. I shall state my propositions, but have little space to say much by way of proof and illustration.

These advantages may be viewed in relation to the scholar—to the

* Vid. Hugo, *Droit Romain*, 1, p.p. 249-259.

† Lerminier, p.p. 19-20.

‡ 1, p. 444, cap. 23.

§ Campbell in his Philosophy of Rhetoric, remarks on the pith of Latin maxims and mottoes. "They (the Greek and Latin languages) are, in respect of vivacity, "elegance, animation, and variety of harmony incomparably superior."—Rhet. "p. 409.

divine—to the statesman—to the lawyer. First in relation to the scholar. An acquaintance with the Roman law is very necessary for an understanding of the Latin classics—in which are to be found many passages altogether unintelligible without this acquaintance. But more than this, the body of the Roman law contains the application of the eternal principles of justice and equity to the affairs of a highly civilized people during several centuries, by accomplished sages—from whom lessons of wisdom are to be derived of inestimable value. It is an interesting fact that the revival of the study of the Roman law in the middle ages commenced the revival of letters and the study of the Roman law, and the study of ancient literature have always since gone hand in hand and flourished or declined together.*

On this head I cannot do better than quote the words of Sir William Hamilton, Professor of Logic and Metaphics in the Edinburgh University, a great authority in France and Germany, in an article contributed by him to the Edinburgh Review in the number for October, 1836. They are as follows: "An acquaintance with the Roman jurisprudence has been always viewed as indispensable for the illustration of Latin philology and antiquities, insomuch, that in most countries of Europe, ancient literature and the Roman law have prospered or declined together; the most successful cultivators of either department have indeed been almost uniformly cultivators of both.—In Italy, Roman law, and ancient literature revived together, and Alciatus was not vainer of his Latin poetry than Politian of his interpretation of the Pandects. In France, the critical study of the Roman jurisprudence was opened by Budæus, who died the most accomplished Grecian of his age; and in the following generation, Cujacius and Joseph Scaliger were only the leaders of an illustrious band, who combined, in almost equal proportions, law with literature, and literature with law. To Holland the two studies migrated in company; and the high and permanent prosperity of the Dutch schools of jurisprudence has been at once the effect and the cause of the long celebrity of the Dutch schools of classical philology. In Germany, the great scholars and civilians, who illustrated the 16th century, disappeared together; and with a few partial exceptions, they were not replaced until the middle of the 18th, when the kindred studies began and have continued to flourish in reciprocal luxuriance."

Secondly: As to the utility of the Roman law to the Divine. This depends upon the question whether classical studies are essential to the divine. I have not time to do more than state the proposition, "that theology is little else than an applied philology and criticism; of which the basis is a profound knowledge of the languages and history of the ancient world. To be a competent divine is in fact to be a scholar."†

I have already pointed at the importance of the Roman law to the scholar. From that, follows its importance to the divine.

Thirdly: On the importance of the Roman law to the statesman.

* Hamilton's Discussions, p. 328. Irving's Civil Law, p. 7.
† Same author, p. 330.

It has been well said that "it is impossible that foreign nations "could carry on their transactions with each other without having "recourse to some common standard, by which to regulate their dis- "putes; and this common standard, by the consent of all, is the "Roman law; in which the rights and privileges of ambassadors, the "interpretation of leagues and treaties, the incidents of war and "peace, are discussed with a care and precision in vain to be sought "for in the institutions of other kingdoms."*

Hence I would remind you of the practice which has not unfrequently obtained in state affairs, when a state paper is to be prepared, requiring a knowledge of international law, and great skill in its composition, to retain the services of an eminent jurisconsult, and the document sent from his hand, goes forth to the world, as the manifesto or vindication of a government. I can give an interesting illustration of this from the life of Edward Gibbon, the author of the Decline and Fall of the Roman Empire. This celebrated historian was an accomplished jurisconsult. His famous 44th Chapter on the Roman Jurisprudence has been translated and commented on by French and German professors, and forms the text book of students on Roman law in some of the continental universities. On one occasion the services of Gibbon in the composition of an important state paper were requested by the British Government. He tells the circumstance in his memoirs, "at "the request," he says, "of the Lord Chancellor and Lord Weymouth, "then Secretary of State, I vindicated aginst the French manifesto, "the justice of the British Arms. The whole correspondence of "Lord Stormont, our late Ambassador at Paris, was submitted to my "inspection and the *memoire justificatif* which I composed in French, "was first approved by the Cabinet Ministers, and then delivered as a "state paper to the Courts of Europe."†

It now remains for me to say a few words with respect to the advantages of the study of the Roman law to the Lawyer.

I have pointed out among the intrinsic excellences of the Roman law its philosophic character and the beauty of the language in which it is written.

It has in consequence been deservedly called a model code, and with much truth and force it has been said that the Roman law is to the modern Lawyer what the beautiful masterpieces of antiquity are to the Statuary and Sculptor.‡

I would further observe that the compilations of the Roman law are less laws than applications of laws made, or cases decided by jurisconsults and magistrates who were eminent for profound learning and exact logic, and the experience and wisdom of the Roman jurisconsults make these opinions of inestimable value in similar cases, which at the present day are continally presenting themselves.§ The most valuable

* Halifax's Analysis, Pref. XIX, and Seq.
† Gibbon's Mem., p. 99.
‡ Blondeau, Chrestomathie, Pref., p. 3, (note)
§ Blondeau, XXV.

parts of these compilations are in fact cases or reports of cases and opinions on them given by the most celebrated jurisconsults of the Roman Empire, and these cases and opinions are unquestionably as valuable to the Civil Lawyer as the reports of cases in the English Law Reports are to an English Barrister.

This is readily seen if we consider under what circumstances these opinions were given. For example a question arises as to the precise extent of the civil responsibility of a public officer--a magistrate—a tutor —curator—or trustee—for some act of mal-administration, or a question arises in the interpretation of a will or a contract, whether at Rome or in the Provinces. The case is referred to the emperor*—by him referred to the imperial jurisconsults,† perhaps a bench of Judges in position not unlike the Judicial Committee of Her Majesty's Privy Council, who decide cases from the Colonies. The report of the Roman jurisconsults was the rule of decision in the case submitted and all similar cases.

Further ;—many of the principles and maxims of modern Jurisprudence are derived from the Roman Law. Many of the dispositions of modern codes are taken from it, and new laws are always made clearer by a comparison with those which precede them, and from which they are derived.

To show how dependent modern Jurisprudence is upon the Roman Law, I will make a few observations on the English and French Law supported by weighty authorities, by which you can judge of its influence upon them—and their obligations to it.

First as to England, we are accustomed to view the English law as anti-Roman. Yet it is a fact too incontestable to be denied that certain parts and principles of the Roman Law have been incorporated into the English. The learned Selden in his dissertation of Fleta has shewn that during the greatest part of the subjection of the island to the Romans, or from the time of Claudius to that of Honorius, about three hundred and sixty years, it was chiefly governed by the Roman Law ; within which interval, Papinian, Ulpian, Paulus and others of the Roman Lawyers whose responses make so distinguished a figure in the Digest, presided in the Roman tribunals in Britain.‡

After the Roman Jurisprudence had been expelled by the arms of the northern barbarians, and supplanted by the crude institutions of the Anglo Saxons, it was again introduced into the Island, upon the recovery of the Pandects, and taught in the first instance with the same zeal as on the continent.§

But the rivalship and even hostility which soon afterwards arose between the civil and common law ; between the two universities and the Law Schools or Colleges at Westminster ; between the clergy and laity, tended to check the progress of the system in England and to

* Giraud, 1, 92.
† Vid. Blondeau Chrestomathie, Intro., p. XC.
‡ Halifax, Pref., p. xxi.
§ Id. xxii.

confine its influence to those Courts which were under the more immediate superintendence of the clergy. The Ecclesiastical Courts, and the Court of Chancery accordingly adopted the canon and Roman Law; and the Court of Admirality, which was constituted about the time of Edward I., also supplied the defects of the laws of Oleron from the civil law, which was generally applied to fill up the chasms that appeared in any of the municipal systems of the modern European nations.

A national prejudice was early formed in England against the civil law. But the more liberal spirit of modern times has justly appreciated the intrinsic merit of the Roman system.*

I will here give you the testimony of English witnesses as to the merits of the Civil Law.

Bishop Burnet in his life of Lord Chief Justice Sir Matthew Hale says: "He set himself much to the study of the Roman Law; and he "often said that the true grounds and reasons of law were so well deliv-"ered in the Digests, that a man could never understand law as a science "so well as by seeking it there, and he therefore lamented much that it "was so little studied in England."†

That great English Lawyer Lord Holt is said to have spoken on this matter as follows: "Inasmuch as the laws of all nations are doubtless "raised out of the ruins of the Roman empire, it must be owned that "the principles of our law are borrowed from the civil law;—there-"fore grounded upon the same reason in many things."‡

A similar opinion is delivered by Dr. Wood: "Upon a review," he says, "I think it may be maintained that a great part of the Civil Law "is part of the law of England and interwoven with it throughout."

According to Dr. Cowell, "the Common Law of England is noth-"ing else but a mixture of the feudal and the Roman Law." And in reference to the Pandects, that accomplished scholar Sir William Jones, says: "it is a most valuable mine of judicial knowledge; it "gives law at this hour to the greater part of Europe and though few "English Lawyers dare make the acknowledgement, it is the true "source of nearly all our English laws that are not of a feudal origin."§

The English and American Statutes of distribution of intestates' effects were essentially borrowed from a Statute of Justinian known as the 118th Novel—the English Statute being drafted by a civilian on this Novel, and we may observe how necessary for the proper understanding of these Statutes, is the power of appreciating the original Novel upon which they are based.

The great Lord Mansfield won for himself the noble title of "founder of the commercial Law of England," and he always maintained that the foundation of Jurisprudence was the Roman Civil Law. He was deeply indebted to that source for his profound views, and the high authority his decisions have attained. It was for his continual allusions

*Kent Com. vol. I., p. 594,5.
† P.p. 23-4.
‡ 12 mod. R. 482.
§ Irving. 95-6.

to the Roman Law that the celebrated author of the letters of Junius launched out his anathemas against him.*

Hume, in his History of England, speaks of the Roman Law as an inestimable boon to the rude nations of Europe in the middle ages and says that "a great part of it was transferred into the practice of the Courts of Justice in England." †

Chancellor Kent, in his Commentaries on American Law,‡ says, speaking of the Roman Law: "The title *de diversis regulis* in the Pandects, as well as the sententious rules and principles which pervade the whole body of the Roman Civil Law, show how largely the Common Law of England is indebted to the Roman Law for its code of proverbial wisdom. There are scarcely any maxims in the English law but what were derived from the Romans; and it has been affirmed by a very competent judge that if the fame of the Roman Law rested solely on the single Book of the Pandects which contains the *Regulæ juris*, it would endure for ever on that foundation." This American Jurist sums up the merits of the Roman Law in language so just and appropriate that I will read it.

"The value of the Civil Law is not to be found in questions which "relate to the connexion between the government and the people, or "in provisions for personal security in criminal cases. In every thing "which concerns civil and political liberty, it cannot be compared with "the free spirit of the English and American Common Law. But "upon subjects relating to private rights and personal contracts, and "the duties which flow from them, there is no system of law in which "principles are investigated with more good sense, or declared and en-"forced with more accurate and impartial justice. I prefer the regu-"lations of the Common Law upon the subject of the paternal and "conjugal relations, but there are many subjects in which the Civil "Law greatly excels. The rights and duties of tutors and guardians "are regulated by wise and just principles. The rights of absolute "and usufructuary property, and the various ways by which property "may be acquired, enlarged, transferred and lost, and the incidents "and accommodations which fairly belong to property, are admirably "discussed in the Roman Law, and the most refined and equitable dis-"tinctions are established and vindicated. Trusts are settled and "pursued through all their numerous modifications and complicated de-"tails, in the most rational and equitable manner. So, the rights and "duties flowing from personal contracts, express and implied, and un-"der the infinite variety of shapes which they assume in the business "and commerce of life, are defined and illustrated with a clearness and "brevity without example. In all these respects, and in many others "which the limits of the present discussion will not permit me to exa-"mine, the Civil Law shows the proofs of the highest cultivation and

*Blaxland, Codex, p. 155. Kent 1, 542.—Campbell's Justices 2, 327.
† Vol. 1, p. 444, cap. xxiii.
‡ 2, 552.

" refinement; and no one who peruses it can well avoid the conviction, ' that it has been the fruitful source of those comprehensive views and " and solid principles which have been applied to elevate and adorn " the jurisprudence of modern nations."*

Taking up now the subject of French Law. It is important to remark that the Roman Law continued to exist from the fall of the Western Empire till the revival of letters, as a living system.

The contrary opinion for a long time prevailed and has been popularized (if I may use the expression) in many of our household books, that the Roman law disappeared with the fall of the Empire, and was only resuscitated in the 12th century by the discovery of a manuscript copy of the Pandects at Amalfi, in Italy. This error was pointed out in a work of M. Savigny a German author entitled " History of the Roman law in the middle ages," published in the first quarter of the present century, in which work are gathered all the traces of the Roman Law from the 5th to the 12th century, proving that during this period it never ceased to exist.

Since the revival of learning, France has produced most illustrious commentators on the Roman Law, who have exhibited such marvellous aptitude for learning and instruction, and made such impression upon their own and subsequent ages, that with reference to them it may truly be said, there were giants in those days. One of these epoch men was the celebrated Cujacius, mentioned already, and born about 1552. All the jurisconsults of Europe are agreed in considering him as the first and greatest of expositors on the Roman Law.

I should here remark that the body of the French Law is, in great part, composed of the Roman Law and the Customary Law, and while Cujacius was the prince of commentators on the former branch of the French Law, a great luminary in the customary law appeared shortly before him in the person of Charles Dumoulin (styled in Latin Molinaeus) who was called the French Papinian,—the prince of the French Customary Law. These two branches of the French jurisprudence,—the Roman Law and the Customary Law,—(*Les Coutumes*) may be said with some justice to hold the same relation to each other which the English Chancery System and Common Law hold to one another in the English Law, but blended together in some measure, and not separated, like the branches of the English Law.

Of Dumoulin, it has been said that he applied the principles and enlightenment derived from his study of the Roman Law, to the interpretation of the French municipal usages. †

Time does not permit me more than to mention the name of Domat as an illustrious Commentator on the Roman Law, born in 1625, the friend and almost the pupil of the celebrated Pascal.

The author of greatest renown in our Courts on French Law, is unquestionably Robert Joseph Pothier, born in 1699, the most distinguished jurisconsult of France in the last century, and eminent both as a

* Com. 1, 547,7.

† De Trosne. Eloge de Pothier. Œuvres de Pothier, vol. I, XLIII.

Commentator on the Customary Law and on the Roman Law in France.

He is emphatically to the French and Lower Canada Lawyer, what Blackstone in the popular mind is to the English Lawyer, though in intellectual power and accomplishments, immeasurably the superior of Blackstone.

One of my aims in this lecture is to shew the advantages of the study of the Roman law to the French Lawyer. Pothier is the great oracle on law in our country, and we cannot better demonstrate the importance of the Roman law to the jurisconsult than by pointing out the obligations of Pothier to it.

His first great labour in the course of his illustrious career was his great work on the Pandects of Justinian, which occupied him 12 years till its completion, or 25 years if we include his preliminary studies.* To accomplish this work, his familiarity with the Roman law was extreme, as was testified by the worn appearance which was exhibited, (his biographer tells us) by the copy of the *Corpus juris* in daily and incessant use by him, and if you take up his treatises on sales, on wills, and legacies, on agency, or other contracts, you will see at once that the French law books on the subjects are only commentaries on the Roman law, and in many places taken word for word from the Roman law.

It is here interesting to state as illustrative of the influence of the Roman law on modern institutions that many of the doctrines enunciated by Pothier in his treatises are incorporated in the celebrated code of Napoleon, and in many parts forms the text—word for word—of this code. On this head, I find the following language in a late number of the Paris Revue de Legislation. "The basis of the theories of contracts and obligations in the code comes to us almost entirely from "the Roman law. It is sufficient in order to be convinced of this "origin to place in juxta-position and compare the texts of the code "with the works of Domat and Pothier."†

Since the code of Napoleon became law, the most illustrious commentator on it was the late Mr. Toullier, whose works are a necessary part of every modern French Lawyer's library It was an indispensable part of this author's education that he became an accomplished Roman Lawyer, like Pothier, and his Biographer tell us that after Cujacius, his favorite author was Vinnius, on the institutes of Justinian, which he left covered with notes, yellow, and torn with constant use.

Another illustrious French Lawyer, still living, and at the head of his profession, and who has filled the high office of Chancellor of France, is the celebrated M. Dupin. At the time when most of the French youth were filled with the opening glories of the Empire of Napoleon, Dupin, an obscure young man, occupied a humble lodging in a small street in Paris, and following the example of Pothier and the native bent of his own genius, spent his days and nights in searching the Roman law, and Cujacius its most illustrious commentator.

* De Trosne, Id. XXXV.
† A.D. 1853, p. 56.

These illustrious instances will suffice to demonstrate the necessity of a familiarity with the Roman law to any lawyer who would aspire to eminence in his profession. No one is more deeply alive than myself to the importance of a knowledge of practice and pleading to the successful lawyer, of the necessity, (to use a favourite expression of the late Daniel O'Connell,)* of being a thorough tradesman in one's profession, but these are the mechanical parts of the profession, beyond which, if a man would rise, he must be able to go to the fountain heads of legal lore, and not sluggishly remain by the streams which are tainted with impurities gathered in the flow of ages. No independent and conscientious jurisconsult will be content with the opinion of Pothier or Toullier when he knows, that that opinion has been got second hand from the Roman law, and perhaps altered and modified according to the mental bias of the commentator. There can be no finality in law any more than in politics. The labours of the jurisconsults of the 16th or 17th or 18th centuries on the Roman law will not suffice to the jurisconsult of the 19th century. His inquisitive eye will not be bounded by the view of Cujacius, or Domat, or Pothier, when, beyond that,—he may examine and scrutinize for himself the broad and fertile tracts of the Roman Law.†

I trust that it is not requisite for me to dwell on the absolute necessity or the vital importance of the study of the Roman law to the lawyer of Lower Canada.

The prominent position held by the Roman law in the studies of the modern lawyer, is sustained by the regulations of Universities, and the enactments of Legislatures. In France, in Germany, in Scotland, the student of law is only admitted to practise as an Advocate, after a regular course of studies on Roman law in the Universities, in which the professorial chairs are occupied by the most eminent jurisconsults.

I will now give one view more in illustration of the position which the Roman Law rightly holds in the modern mind.

It has been finely and most truly observed that the Roman law bears the same relation to law in general, which the classics do to literature.‡

And considering the relation in which the classics stand to literature, it has always struck me as a most forcible argument in favour of their cultivation, that in this way, the greatest intellects in the various civilized countries of the world,—having the same studies in common,—have been carried onward in the same direction, and so have tended to produce the greatest intellectual results, manifesting in this way a marvellous unity of purpose in the diversity of these countries. The modern mind being formed upon the same intellectual basis—being turned in the same direction—by the combined efforts of many different thinkers in different countries—has produced marvellous utilitarian results.

* Vid. Campbell's Lives of Chief Justices, 2, 167.

† "En droit comme en histoire, comme en politique, comme en tout, c'est une pretension déraisonnable de vouloir rompre avec le passé."—Troplong, Vente, 1, Pref. XXX.

‡ Savigny.

It is not difficult to conceive that a system of jurisprudence so perfect and comprehensive as the Roman law,—being familiar to the minds of the legislators of different countries in different parts of the world, and being in fact their model code, and the ground work of their legal education, should have the effect of removing the jarring and discordant elements in the various modern codes.

The tendency of this noble jurisprudence undoubtedly is, to lessen the deplorable antagonism so well known among jurisconsults by the name of the conflict of laws, and to bring the legislations of modern nations into harmony with one another—to bring to pass for national codes in general—what has in a great measure come to pass—and through its agency,—as regards the commercial law of the world—to bring the laws of modern nations into a grand unity and harmony.

In the magnificent fortunes of this noble jurisprudence, we see exhibited the majestic influences of the human intellect through countless years—we see exhibited the triumph of mind over matter.

The Roman Jurisprudence is still engaged in its august mission of harmonizing the nations of the earth—unchanged and unchangeable—because it laid its foundations in the bye-gone ages of the ancient world—deep in the eternal principles of justice. And—as we contemplate its onward progress—we are again reminded of the noble observation of D'Agueasseau, quoted in the beginning of this lecture, that "the grand destinies of Rome are not yet accomplished—she reigns throughout the world by her reason, after having ceased to reign by her authority."

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(*From London Legal Observer.*)

Court of Exchequer.

Kirby v. *Simpson*. June 3, 26. 1854.

ACTION AGAINST MAGISTRATE.—QUASHING ORDER OF COMMITMENT. —NOTICE OF ACTION.

Held, *that an action cannot be maintained against a Magistrate for committing the Plaintiff to prison on a charge under Masters and Servants' Act* (26 *Geo.* 2, c. 14), *without first quashing the Commitment.*

Held, *also, that inasmuch as the trespass was caused by the Defendant in his capacity of Magistrate and in the execution of his office, the Defendant was entitled to notice of action under the* 11 & 12 *Vict. c.* 44, *and a rule was discharged to set aside a nonsuit, where such notice had not been given.**†

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* The 11 & 12 Vic., c. 14, sect. 2, enacts:—That for any Act done by a Justice of the Peace in a Matter of which by Law he has not Jurisdiction, or in which he shall have exceeded his Jurisdiction any Person injured thereby, or by any Act done under any Conviction or Order made or Warrant issued by such Justice in any such Matter, may maintain an Action against such Justice in the same Form and in the same Case as he might have done before the passing of this Act, without making any Allegation in his Declaration that the Act complained of was done maliciously, and without any reasonable and probable Cause; Provided nevertheless, that no such Action shall be brought for anything done under such Conviction or Order until after such Conviction shall have been quashed, either upon Appeal or upon Application to Her Majesty's Court of Queen's Bench; nor shall any such Action be brought for anything done under any such Warrant which shall have been issued by such Justice to procure the Appearance of such Party, and which shall have been followed by a Conviction or Order in the same Matter, until such Conviction or Order shall have been so quashed as aforesaid; or if such last-mentioned Warrant shall not have been followed by any such Conviction or Order, or if it be a Warrant upon an Information for an alledged indictable Offence, nevertheless if a Summons were issued previously to such Warrant, and such Summons were served upon such Person, either personally or by leaving the same for him with some Person at his last or most usual Place of Abode, and he did not appear according to the Exigency of such Summons, in such Case no such Action shall be maintained against such Justice for anything done under such Warrant.

† Our Provincial Statute 14 and 15 Vic. c. 54, sec. 2, is in effect, the same as sec. 9, of this Imperial Statute.

That no Writ shall be sued out against any Justice of the Peace or other officer or person fulfilling any public duty, for any thing by him done in the performance of such public duty, whether such duty arises out of the common law, or is imposed by Act of Parliament, either Imperial or Provincial, nor shall any judgement or verdict be rendered against him, unless notice in writing of such intended Writ, specifying the cause of action with reasonable clearness, shall have been delivered to such Justice, officer or other person, or left at the usual place of his abode, by the Attorney or Agent of the party who intends to sue out such Writ, at least one calendar month before suing out such Writ, and in computing such calendar month, the day of the service of such notice and the day of suing out such Writ shall both be excluded, and on such notice shall be written the name and place of abode of such Attorney or Agent suing out such Writ, and by the cause of action stated in such notice the party suing out such Writ shall be bound, and shall not be allowed to give evidence of any other cause of action at the trial thereof.

This was a rule *nisi* obtained on April 20 last, to set aside the nonsuit and for a new trial of this action, which was brought by the Plaintiff, as next friend of his son, to recover damages from the Defendant for assaulting his son and giving him into custody, and for maliciously instigating his master to prefer a charge against him under the 26 Geo. 2, c. 14 (the Masters and Servants' Act), under which he was convicted, committed to Beverley gaol for three weeks, and whipped. It appeared that the Plaintiff's son was in the service of a person, and had accidently killed one of the Defendant's ducks, and the Defendant had dismissed the boy with a reprimand, on his stating his belief the duck was a wild one, but had, about a week afterwards, proceeded under the above Statute on his master bringing the boy before him and saying he had told him not to kill the duck. The Commitment directed the boy to be corrected, and on the governor of the gaol writing to the Defendant whether it was to be carried into effect, he had replied in the affirmative as the boy was very bad, and both his masters had complained to him they could do nothing with him. The Defendant pleaded "not guilty by Statute," and on the trial before *Cresswell*, J., at the last York Assizes, a nonsuit was directed on the ground that the Defendant was entitled to notice of action under the 11 & 12 Vict. c. 44.

B. Thompson showed cause against the rule, which was supported by *Price* on the ground that the question, whether the Defendant had acted *bonâ fide*, should have been put to the Jury, as if the Defendant had acted *mâla fide* he was not entitled to notice, citing *Booth* v. *Clive*, 10 C. B. 827; 2 L. M. & P. 283.

The *Court* said, that the first count of the declaration was in trespass and complained that the Defendant had committed the Plaintiff to prison. In order to prove this it was necessary to give in evidence the commitment, which put the Plaintiff out of the Court, as until it was quashed no action could be brought. It also showed on the face of it that the trespass was caused by the Defendant in his capacity of a Magistrate, which entitled him to notice. The second count was for maliciously inciting the Plaintiff's master to make a charge before the Defendant under the Masters and Servants' Act, and for maliciously and without reasonable and probable cause committing the Plaintiff to prison on that charge. This was a count for an act done in execution of the office of a Magistrate, inasmuch as it showed there was a charge before the Defendant on which he acted, although it might be that he had incited it, but of which there was not sufficient evidence. The Defendant was therefore entitled to notice, and the rule must be discharged.

CROWN CASES RESERVED.

Regina v. *Pratt*. June 2, 1854.

INDICTMENT FOR STEALING GOODS.—ASSIGNMENT FOR BENEFIT OF CREDITORS.—BAILMENT.

The defendant who, according to arrangment, remained on the premises to complete certain works, had removed goods which were included in an assignment for the benefit of his creditors, with the fraudulent intention of depriving the parties beneficially interested therein, but the jury found that he was not in possession as agent for the trustees at the time of the removal: Held, *that he could not be convicted of having stolen the same, as his possession was lawful, and the conviction was quashed.*

This was an indictment against the prisoner for having stolen certain property, which he had assigned over for the benefit of his creditors. It appeared that the prisoner carried on the business of a thimblemaker and manufacturer, and that it had been arranged he should be allowed to complete certain unfinished work, and he accordingly remained in possession for the purpose, and had availed himself of the opportunity to remove the property in question. On the trial before the Recorder of Birmingham, the jury found that the property was removed after the assignment, and with the fraudulent intent of depriving the parties beneficially interested under the deed, but that the prisoner was not at the time of such removal in the care and custody of the goods as agent for the trustees.

Bittleston & Field for the prisoner.
A. Wills for the prosecutors.

The *Court* said, that as the finding of the jury clearly negatived a bailment, and the prisoner was in lawful possession of the goods, the conviction must be quashed.

Regina v. *Featherstone*. April 29, 1854.

SIGNATURE OF CASE RESERVED ON DEATH OF JUDGE.—PRACTICE.

On the death of a Judge who tried a prisoner, held *that the case which had been reserved could be signed by the other Judge on the circuit.*

Huddleston applied for the direction of the Court in reference to this case, which had been reserved by the late Mr. Justice *Talfourd* but who had died before signing the same.

The *Court* said, that all cases at the assizes were stated to be tried before the two Judges, and that therefore the signing of Mr. Justice *Wightman*, who was on the circuit with the late Judge, would be sufficient.

Regina v. *Pratt*. June 3, 1854.

INDICTMENT FOR STEALING AGAINST DEBTOR ASSIGNING FOR BENEFIT OF CREDITORS.—CONTINUING POSSESSION.

The owner of certain laths had assigned all his property to trustees for the benefit of his creditors, but he remained in possession. On an indictment for stealing such laths, the Jury found that the prisoner had removed them after the execution of the deed and with intent to defraud the parties beneficially interested, and not as agent for the trustees. The conviction was quashed on the objection that the possession of the property had never been changed.

It appeared that the prisoner had been the owner of certain laths and had assigned all his property to trustees for the benefit of his creditors, but remained in possession and carried on the business for the trustees. The Jury had found, on an indictment for stealing laths by removing them, that he had removed them after the execution of the deed, and with intent to defraud the parties beneficially interested, and not as agent for the trustees. The prisoner was convicted.

Bittleston for the prisoner on the ground the possession of the property had never changed.

W. J. Willis for the prosecution.

The *Court* said the conviction must be quashed.

Regina v. *Featherstone*. June 3, 1854.

CONVICTION OF PARTY ASSISTING WIFE TO STEAL FROM HUSBAND LARCENY.

Held, *that although a wife cannot be found guilty of larceny for stealing her husband's property, yet if she commit adultery, and then steal the goods with the adulterer, he is guilty of felony, as she then determined her quality of wife, and was no longer recognized as having any property in the goods.*

This was an indictment against the prisoner for stealing 22 sovereigns from the prosecutor, whose wife, it appeared, had taken them from his bedroom without authority, and given them to the prisoner, upon whose person they were found. On the trial, before *Talfourd*, J., the prisoner was found guilty, but judgment was respited, for the

opinion of the Court to be taken whether the delivery of the husband's goods by the wife to the prisoner with the knowledge by him that she took them without her husband's authority, was sufficient to support the conviction.

No counsel appeared.

The *Court* said, the general rule was that the wife could not be found guilty of larceny for stealing her husband's goods. But if she took away and converted to her own use his goods, it was no larceny, since they were one person. This was, however, subject to the qualification that if she committed adultery, and then stole the goods with the adulterer, she then determined her quality of wife, and was no longer recognized as having any property in the goods, and the prisoner assisting her in stealing them was guilty of felony: *Dalton*, c. 157. The conviction would therefore be affirmed.

Regina v. *Larkin*. June 8, 1854.

INDICTMENT.—AMENDEMENT AFTER VERDICT.—NEW INDICTMENT.

In an indictment for stealing goods, the property of A. B., *the second count charged the receipt of the property knowing it to be stolen, but by mistake the prosecutor's name, instead of the prisoner's, was used*: Held, *quashing a conviction, that the quarter sessions could not amend after verdict by substituting the prisoner's for the prosecutor's name, but that a fresh indictement against the prisoner might be preferred.*

In this indictment for stealing a quantity of beef, the property of Abraham Brooksbank, the prisoner had been found guilty on the second count for receiving the property, knowing it to be stolen, and on the prisoner's counsel moving in arrest of judgment on the ground of the mistake inserting the prosecutor's name in such count instead of the prisoner's, the Court of quarter sessions amended the indictment.

Heaton for the prisoner; *Hale* for the prosecution.

The *Court* said, that the motion in arrest of the judgment was right, as there could be no amendment after verdict, and the indictment was bad on the face of it, for not stating that the prisoner received the property knowing it to be stolen. The conviction would be quashed, but a fresh indictment must be preferred.

CAP. CXCIV.

An Act to amend the Act to amend the Laws relative to the Courts of original Civil Jurisdiction in Lower Canada.

[*Assented to 14th June*, 1853.]

Preamble. WHEREAS it is expedient to amend the Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act to amend the Laws relative to the Courts of original Civil Jurisdiction in Lower Canada*, in the manner hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the seventeenth section of the Act cited in the Preamble to this Act, and any other enactment in the said Act or of any other Act which requires the Superior Court or any *quorum* thereof to hold sittings out of Term in the Districts of Quebec and Montreal, on the first two juridical days in each week in every month except August, shall be and the said Section and enactments are hereby repealed; and all things which under the said section or any such enactments as aforesaid, the said Court or any *quorum* thereof is required or authorized to do at any such sitting, shall and may be done by the said Court in Term: Provided always, that the said Court or any *quorum* thereof may, in any District, and on any day or days which shall have been appointed for the purpose by the Court during the then last Term at the same place, hold a sitting or sittings out of Term, for the purpose of giving judgment in cases theretofore heard and taken *en délibéré*, whatever be the nature of the judgment or of the case in which it is given.

12 V. c. 38.

Sect. 17 of the said Act repealed, and weekly sittings of S. C. abolished.

Proviso: Court may sit out of Term for giving judgments.

II. And be it enacted, That so much of the sixteenth section of the Act cited in the Preamble to this Act, as fixes the times of holding the terms of the said Superior Court in the Districts of Quebec and Montreal respectively, at any time or times other than the time or times appointed by this Act for holding such Term or Terms, shall be and is hereby repealed; and the Terms of the said Court shall be held in the said Districts respectively at the times

Sect. 16 of the said Act repealed in part, and Terms of S. C. in Quebec and Montreal to be those in Schedule A.

and places mentioned in the Schedule A to this Act, and the days from and to which any Term is in the said Schedule directed to be held, shall in all cases be included in such Term: Provided always, that the said Court shall have full power to continue any such Term, beyond the time fixed in the said Schedule for its continuance, by any order or orders to be made for that purpose during such Term.

Proviso: Court may prolong any Term.

Part of s. 77 of the said Act repealed, and Terms of Circuit Court in Quebec and Montreal to be as in Schedule B.

III. And be it enacted, That so much of the seventy-seventh section of the said Act as prescribes the times at which the Circuit Court shall be holden in and for the Quebec Circuit and the Montreal Circuit respectively, shall be and is hereby repealed; and the said Circuit Court shall be holden in the said Circuits respectively at the times mentioned in the Schedule B to this Act.

Power of Governor in Council to alter Terms, not to be affected.

IV. Provided always, and be it enacted, That nothing in the preceding sections contained shall be construed to repeal the first and second provisos of the seventy-seventh section of the said Act or any other provision thereof by which the Governor in Council is empowered from time to time to alter the times of holding the terms of the said Superior Court, or of the said Circuit Court, but the said provisos and provisions shall extend and apply as fully to the terms of the said Courts mentioned in this Act and the Schedules hereunto annexed, as to the terms mentioned in the said Act; And provided also, that notwithstanding any thing contained in the said provisos and provisions, it shall be lawful for the Governor, as circumstances shall require it, by Proclamation, to increase the number of terms in any Circuit to any number not exceeding four in each year, and to fix the days for holding such additional terms and the number of days to be included in such terms.

Proviso: Governor may increase terms in any Circuit.

Superior Court may limit and fix the *Enquête* days: *nonobstante* s. 29 of the said Act.

V. And it be enacted, That notwithstanding any thing in the twenty-ninth section of the said Act contained, the Judges of the Superior Court sitting in Term in any District, shall have full power and authority, by a Rule of Practice promulgated in open Court, to limit the number of days on which evidence may be adduced in such District, and may fix any number of days certain for *Enquête* days, which they may deem proper, and shall have full power and authority to alter or repeal any such Rule of Practice; Provided always, that not less than six days in the Districts of Quebec and Montreal, and not less than three days in either of the other Judicial Districts, shall be fixed by any such Rule of Practice as such *Enquête* days in any month in the year except the months of July and August.

Proviso: *Enquête* days not to be less than a certain number.

VI. And be it enacted, That no day in any of the Terms of the Superior Court to be holden at Montreal and Quebec as aforesaid, shall be an *Enquête* day, either for the Superior or for the Circuit Court, unless in respect of Default or *Ex parte* causes or proceedings, as hereinafter is provided, or in respect of any proceeding of a summary nature, wherein the Court, Judges or Judge having cognizance thereof, may have specially so ordered. Days in Term to be *Enquête* days for certain matters only.

VII. And be it enacted, That every Juridical day in Term and out of Term except from the Ninth day of July until the First day of September both exclusive, in each year, shall hereafter be an *Enquête* day for all Default or *Ex parte* causes and proceedings in the Superior Court; and all witnesses produced for examination therein may be sworn, and their examinations taken and acknowledged, before the Prothonotary of the said Court, appointed for the District, and such examinations so taken shall serve to all intents as though taken at an *Enquête* sitting in the ordinary course. All juridical days (except from 9th July to 1st. Sept.) to be *Enquête* days in default and *Ex parte* cases. Prothonotary may swear witnesses, &c.

VIII. And whereas in such causes and proceedings *Ex parte* it is required by law that notice of the inscription thereof for *Enquête* be given to the party foreclosed from pleading, and doubts may be entertained as to the extent of the rights of such party at the *Enquête*, Be it enacted, that such party shall not be entitled to adduce evidence thereat, but may cross-examine all witnesses brought up against him, and resist the taking of any evidence in any wise illegal or inadmissible; and if such *Enquête* be proceeding, as hereinbefore is provided, before a Prothonotary only, all objections taken by either party shall by such Prothonotary be taken down in writing and kept of record in such cause or proceeding for adjudication by the Court at the final hearing thereof. Recital. Rights of foreclosed party attending an *Enquête* defined.

IX. And be it enacted, That it shall be lawful for any Circuit Judge or any Judge of the Superior Court holding a Circuit Court, to fix in term any days out of term as *Enquête* days for all appealable cases before such Circuit Court; and all witnesses produced for examination therein, may be sworn and their examination taken and acknowledged before the Clerk of the said Court, and such examinations so taken shall serve to all intents as though taken at an *Enquête* in term; but all objections taken by either party, shall by such Clerk be taken down in writing, and kept of record in such cause or proceeding for adjudication by the Court at the final hearing thereof; Provided always, that no such *Enquête* shall be proceeded with on any such day out of term, unless notice of the intended holding of such *Enquête* be given to the opposite party at least ten days previous to the day fixed for such *Enquête*. *Enquête* days to be fixed out of term for appealable cases in C. Court. Objections to be reserved, &c. Proviso. Notice.

No party bound to proceed in any cause from the 10th July to 31st August inclusive in the Superior Court.

X. And be it enacted, That for and notwithstanding any thing in the said Act, or in any other Act or law, no party to any suit or case in or before the said Superior Court, sitting at Quebec or Montreal, shall be compellable to file any plea or answer, or take any step, or otherwise to proceed therein, between the tenth day of July and the last day of August both inclusive, in any year, or shall incur any forfeiture, penalty or disadvantage by refraining from so doing between the said days, unless he shall be commanded so to do by some express order of the Court or of some Judge thereof made in such suit or case (which order the Court or any Judge thereof may always make) and in the absence of such order, no day from the tenth of July to the last day of August, both inclusive, shall be reckoned in computing the delay or time allowed for filing any plea or answer, or taking any step or otherwise proceeding in any suit or case before the said Court, but for the purpose of computing such time or delay the first day of September shall be taken to be the day next following the ninth day of July, and such time or delay shall be computed by reckoning only the days before the tenth day of July and after the last day of August: Provided always, that nothing in this section shall extend to prevent or excuse any Prothonotary, Sheriff, Bailiff or other Officer from returning any Writ or doing any other thing on the day when he would otherwise be bound to return or do the same, or to prevent or excuse any party or person from obeying any process or order of the Court issued or made in or with reference to any particular suit or case, or from doing the thing which he may thereby be commanded to do, at the time mentioned in such process or order.

Proviso: Exceptions as to things expressly ordered by the Court to be done.

When the foregoing provisions shall come into force: but they shall be taken notice of before.

XI. And be it enacted, That the foregoing enactments shall come into force upon, from and after the ninth day of July, one thousand eight hundred and fifty-three, and not before, but their coming into force on the said day shall, from and after the passing of this Act, be taken notice of by the said Superior Court and by all Judges and Officers thereof and all parties to or concerned in any suit, action or proceeding before the said Court, and they shall govern themselves accordingly in fixing the return days of Writs and Process which ought to be returnable in term, and the time at which any thing is to be required or allowed to be done in any such suit, action or proceeding, and in all other respects whatsoever; and any Writ or Process which is only returnable in Term, or any thing which can only be done in Term, and which shall before or after the passing of this Act have been made returnable or ordered to be done on some day which, under the foregoing enact-

As to things which can only be done in Term and appointed before this Act

ments, will not be a day in Term, shall be returnable on the return day in Term next after the day on which it was made returnable, or shall be done on that day in Term on which such thing can be done next after that on which it shall have been ordered to be done; and any application for a judgment of ratification of a title to immoveables of which notice may have been given for some day which under the foregoing enactments will not be a day in term, shall be made or filed on the day in term next after that on which such application should have been made, had this Act not been passed.

takes effect, to be done on a day which will not be a day in Term.

XII. And be it enacted, That in addition to the places at which the Circuit Court is directed to be holden by the seventy-seventh section of the said Act, the said Court shall also be holden in every year at the places and times hereinafter appointed; and the local extent and limits of the jurisdiction of the said Circuit Court, sitting at such places respectively, shall be as follows, that is to say:

New Circuits established and described.

IN THE DISTRICT OF QUEBEC.

At Tadoussac, in the County of Saguenay, in and for the Circuit to be called the Tadoussac Circuit, from the nineteenth to the twenty-eighth of June, both days included, and from the twelfth to the twenty-first of October, both days included in each and every year, which said Circuit shall include and consist of all that part of this Province lying on the North shore of the River St. Lawrence and on the East side of the River Saguenay.

Tadousac Circuit.

IN THE DISTRICT OF THREE-RIVERS.

1. In the parish of *St. Antoine de la Baie du Febvre*, in and for the Circuit to be called the Circuit of Yamaska, from the seventh to the twelfth day, both days included, of the months of January, July and October; which said Circuit shall include the County of Yamaska, the Seigniory of Nicolet and Augmentation in the County of Nicolet, the Townships of Wendover, Wickham and Grantham, and the first, second, third, fourth, fifth, sixth, seventh and eighth ranges of the Township of Upton, in the County of Drummond.

Yamaska Circuit.

2. In the parish of *Saint Norbert d'Arthabaska*, in and for the Circuit to be called the Circuit of Arthabaska, from the fifteenth to the twentieth, both days included, of the months of January, July and October, which said Circuit shall include the Townships of Warwick, Arthabaska, Stanfold, Blandford, Maddington, Bulstrode, Horton, Aston and Augmentation, and Simpson.

Arthabaska Circuit.

IN THE DISTRICT OF KAMOURASKA.

Green Island Circuit.

In the parish of *St. Jean Baptiste de l'Isle Verte*, in and for the Circuit to be called the Circuit of Isle Verte, from the first to the tenth of March, July and December, both days included, in each and every year, which said Circuit shall include and consist of the Parishes of Trois-Pistoles, St. Eloi, Isle Verte, St. Arsène, St. George de Cacouna, in the County of Rimouski, and all the lands in the said County, lying between the said Parishes and the Province line, and between a line prolonged directly in continuation of the line separating the Parishes of St. Simon and Trois pistoles, and a prolongation of the eastern boundary of the Parish of *Rivière-du-Loup*.

IN THE DISTRICT OF GASPÉ.

Fox River Circuit.

At Fox River, in and for the Circuit to be called Fox River Circuit, from the first to the tenth day of August both days included, in each and every year after the present year one thousand eight hundred and fifty-three; and the said Circuit shall be called The Fox River Circuit, and shall comprise all the settlements on the coast of the River or Gulf of St. Lawrence, from St. Anne des Monts, exclusively, to Cap Rosiers, inclusively.

Places included in any Circuit detached from all others.

And so much of any Circuit established by the said Act as lies within the limits of either of the said Circuits established by this Act, shall be and is hereby detached from the Circuit in which it is now included, and shall no longer form part thereof: Provided always, that no change made by this section in the limits of any Circuit, shall affect any action, suit or proceeding commenced in any Circuit before this section shall come into effect, but the same and all proceedings and matters incident thereto, whether before or after execution, shall be continued and dealt with as if the limits of the Circuit in which such action, suit or proceeding shall have been commenced, had not been changed or affected by this Act.

Proviso: not to affect pending cases.

When the next preceding section shall come into force.

XIII. And be it enacted, That the next preceding section shall come into force upon the first day of October next, upon, from and after which day, and not before, the Circuits therein mentioned shall be held to be established: Provided always, that any Clerk or Officer of the Circuit Court in and for either of the said Circuits, may, be appointed at any time after the passing of this Act, to enter upon and perform the functions and duties of his Office upon the said day, although the Circuit Court may not on the said day have met or sat in the Circuit for which he shall be appointed.

Proviso: as to appointment of Officers.

Circuit Judges may exercise powers of Judges of Superior Court at all times in Ottawa and Kamouraska.

XIV. And be it enacted, That so much of the thirteenth section of the said Act or of any other part thereof, as prevents any Circuit Judge, when in the District of Ottawa or in the District of Kamouraska, from exercising the powers of a Judge of the Superior Court during any Term of the Superior Court in such District, shall be and is hereby repealed; and from and after the passing of this Act, each of the Circuit Judges for Lower Canada, when in the District of Ottawa or in the District of Kamouraska, shall, at all times in Term or out of Term of the said Superior Court, have and exercise all the powers vested in any one Judge of the Superior Court.

The resident Judge of Superior Court in other districts than Quebec or Montreal may hear and give judgment in any case out of Term, subject to rehearing in Term at the instance of either party.

XV. And be it enacted, That on such days in vacation as shall have been appointed for the purpose either by any Rule of Practice to be made by the Superior Court or by any order to be made by the said Court sitting in Term in the District to which such order shall relate, the Judge of the Superior Court resident in any District in Lower Canada, except the Districts of Quebec and Montreal, shall and may hear and give judgment in any case or matter which the said Court sitting in Term in the same District could hear and give judgment in, and such judgment shall have in all respects the same effect as a judgment of the said Court in Term, unless the party deeming himself aggrieved thereby shall, on or before the third juridical day after that on which such judgment shall have been given, file in the Office of the Prothonotary of the said Court for such District his exception to such judgment and the reasons of such exception, and shall at the same time pay into the hands of the said Prothonotary the sum of Two Pounds Ten Shillings currency, or such other sum as shall be fixed by any Rule of Practice of the said Court, to secure the costs on the rehearing of the case upon such exception, in which case the judgment shall not be executed against such party, but the case or matter shall be reheard by the Court in Term in the same District, after which such judgment shall be given therein and such order made as to the costs of the rehearing as the Court shall think right; and the Resident Judge shall not be precluded from sitting as a member of the Court at such rehearing by reason of his having given the judgment excepted to: Provided always, that Rules of Practice may be made for regulating the proceedings under this section, in like manner as for regulating other proceedings in the said Court, but in the absence of such Rules the Judges or Court shall govern themselves and regulate the proceedings in each case, in such manner as they may deem best adapted to ensure justice to the parties concerned with the least possible expense and delay.

Security for costs to be given.

Proviso: as to practice in such cases.

Two Circuit Judges in Gaspé may hold Superior Court.

12 V. c. 40.

XVI. And be it enacted, That for and notwithstanding any thing in the said Act or in the Act passed in the same session, and intituled, *An Act to amend the Law relative to the administration of Justice in Gaspé*, the two Circuit Judges resident in the District of Gaspé may hold the Terms of the Superior Court therein, without its being necessary that any other Judge should be present at such term, and with the same powers and authority as if the Court were held by three Judges as provided by the said Act; excepting always, that whenever the said Court shall be held by the said two Circuit Judges alone, and they shall differ in opinion as to the judgment or order which ought to be made in any case, the record in such case or so much thereof as the two Circuit Judges shall agree upon as sufficient, shall be transmitted by mail by the Prothonotary having the custody thereof to the Prothonotary of the Superior Court at Quebec, so soon as the parties or any of them shall have paid to such first mentioned Prothonotary the sum necessary to pay the postage of the said record, and being so transmitted, the case shall, at the diligence of either of the parties, be heared in a summary manner by the Superior Court at Quebec in term, and such judgment or order made therein as to law may appertain, and the record with such judgment or order shall be transmitted by mail by the Prothonotary at Quebec so soon as the sum necessary to pay the postage thereon shall have been paid to him by any of the parties concerned, to the Prothonotary in the District of Gaspé by whom it was transmitted to Quebec, and such judgment or order shall then be obeyed and executed or may be appealed from and otherwise dealt with as the judgment or order of the Superior Court sitting in term in the District of Gaspé; and the costs attending such transmission of the Record and the rehearing at Quebec shall be in the discretion of the Court at that place: Providad always, that Rules of Practice may be made for regulating the proceedings under this section, in like manner as for regulating other proceedings in the said Court, but in the absence of such Rules, the Judge or Court shall govern themselves and regulate the proceedings in each case in such manner as they may deem best adapted to ensure justice to the parties concerned with the least possible expense and delay.

Provision in cases where they differ in opinion.

Hearing at Quebec, &c.

Re-transmission of record to Gaspé, &c.

Proviso: as to practice under this section.

Provision with respect to Writs of Attachment to attach moneys, &c.,

XVII. And be it enacted, That whenever a Writ of Attachment, *Saisie Arrêt*, either before or after judgment, shall issue from the Superior Court for Lower Canada or the Circuit Court for Lower Canada, to attach moneys, goods or effects in the hands of any person resident in any District other than the one from which such

Writ issues, the *Tiers-Saisi* upon whom such Writ of Attachment shall have been served or executed by the Sheriff of such other District, shall (subject to the provision hereinafter made,) be bound to answer and make his declaration to such Writ according to the exigency thereof at the place where the same issues, and default duly obtained against such *Tiers-Saisi* shall have the same effect as if he were summoned to answer in the District where he is domiciliated and had made default to appear and answer there; and in the event of a contestation of the declaration of the *Tiers-Saisi*, the same may be had in the District where the action has originated, and the *Tiers-Saisi* upon service on him of such contestation shall be bound to answer and plead thereto in such last mentioned District, and the Superior Court and Circuit Court holden within the said District, shall have jurisdiction to hear and adjudge upon the merits of such contestation and upon all matters connected with and relating thereto; Provided nevertheless, that such *Tiers-Saisi* may on or before the return day of the Writ of Attachment, *Saisie Arrêt*, so served upon him or them as aforesaid, appear at the office of the Prothonotary of the Superior Court within the District where he resides, and make his declaration before such Prothonotary or a Judge of the Superior Court, either of whom is hereby empowered to administer the requisite oath or affirmation, or to recive such declaration, which shall have the same effect as if it were made at the place where the Writ of Attachment is returnable.

In the hands of a party in a district other than that in which the Writ issues.

Proviso: *Tiers-Saisi* may appear in such other District.

XVIII. And be it enacted, That whenever any declaration of a *Tiers-Saisi* shall be made (as provided for in the next preceding Section) at the office of the Prothonotary of the Superior Court in a district other than the one from which the Writ of Attachment issues, it shall be the duty of the Prothonotary where such declaration is made, forthwith to transmit the same to the Prothonotary or Clerk of the Court at the place where the Writ has issued, and subsequent proceedings may be had thereon against the *Tiers-Saisi* or defendant in the cause, in the same manner as if the declaration of the *Tiers-Saisi* were made before the Court, Judge, Clerk or Prothonotary at the place where the Writ of Attachment issued; and where the *Tiers-Saisi* has made default to answer on the return day of the Writ at the place where the Writ is returnable, the Certificate of the Prothonotary of the Superior Court in the district where the *Tiers-Saisi* is or are resident, to the effect that the *Tiers-Saisi* has made default to appear and make declaration to such Writ on or before the return day thereof, shall be sufficient to enable the Plaintiff to obtain the benefit of default against such *Tiers-Saisi*.

Declaration of *Tiers-Saisi* to be transmitted to the Clerk of the Court at the place where the Writ issued; Default, &c. of *Tiers-Saisi*.

What shall be the exigency of Writs of *Saisie-Arrêt* in the Superior Court or in the Circuit Court in appealable cases, &c.

XIX. And be it enacted, That the exigency of all Writs of *Saisie Arrêt*, whether before or after Judgment, to be issued out of the Superior Court, or out of the Circuit Court in appealable cases, shall in effect be, as regards every *Tiers-Saisi*, therein named, to require such *Tiers-Saisi* to appear and make the declaration required of him, at the Office of the proper Prothonotary or Clerk of the Court before which he shall be summoned, during Office hours, on or before the Return day of such Writ, or on the juridical day next thereafter; and if, after due return of such Writ into such Office, any *Tiers-Saisi* thereby summoned shall fail to appear and make such declaration within the time so enjoined, his default shall on the next following juridical day be recorded, and shall thereupon have the same effect to all intents as though ascertained and recorded in open Court, saving always the right of such *Tiers-Saisi* to appear in the District in which he may reside, as hereinbefore provided; and the Prothonotary or Clerk shall have power to administer the proper oath to every such *Tiers-Saisi*; Provided always, that no such declaration made by a *Tiers Saisi* before the day of the return of the Writ, shall be received by the Prothonotary or Clerk unless it be accompanied by a Bailiff's Certificate, shewing that notice has been given to the Plaintiff or his Attorney, at least twenty-four hours previously, of the intention of the *Tiers-Saisi* to make such declaration before the return of the Writ.

Default of *Tiers-Saisi*.

Tiers-Saisi may appear in District in which he resides.

Proviso: as to declarations made before the day of Return.

Delay for pleading and between pleadings in appealable cases before Circuit Court reduced.

XX. And be it enacted, That notwithstanding any thing in the fifty-ninth and twenty-fifth sections of the Act cited in the preamble to this Act, the delay for pleading and between the several pleadings in appealable cases before any Circuit Court shall be five clear days only, and not eight days, as in and by the said sections provided; but that all the provisions of the twenty-fifth and twenty-sixth sections of the said Act shall apply to the said delay of five days, in the same manner as they now apply to the several delays of eight days.

Within what delay certain pleas must be filed.

XXI. Provided always, and be it enacted, That notwithstanding any thing in the twenty-fifth section of the said Act or in this Act or in any other law contained, no *Exception à la forme*, *Exception Déclinatoire*, *Exception Dilatoire*, or other preliminary plea, shall be received, unless the same be filed within *four days* from the day of the return of the Writ or of the filing of the pleading to which such preliminary Exception or plea is opposed;

Proviso: not to preclude the subsequent

But the fact of his having filed any such preliminary plea or Exception shall not preclude any party from filing afterwards a plea or pleas to the merits of the cause within the

delay allowed by law for the filing of such pleas; and such delay shall be reckoned from the day of the interlocutory judgment on the preliminary plea or of the withdrawal of the same. Filing of other pleas.

XXII. And be it enacted, That so much of the ninety-second section, or of any other part of the said Act, as directs that the mere filing of a *Demande* in intervention in any case, shall stay proceedings in such case during three days, shall be and is hereby repealed; and that from and after the passing of this Act, the *Demande* in intervention may be filed as at present without being allowed by any Court or Judge, but shall not stay proceedings in the case or otherwise affect the same until it shall have been allowed by the Court upon motion in Term or by one of the Judges of the Court upon petition in vacation; and that after any such *Demande* in intervention shall have been allowed by the Court, the proceedings in the case shall be stayed during three days, and the provisions of the said ninety-second section shall apply after such allowance of the *Demande* in intervention as they now do after the filing of the same: And every such motion or petition may be made or presented at any time before Judgment. Sect 92 of the said Act amended, and other provision made as regards Demandes in intervention.

XXIII. And whereas the Courts of Lower Canada are not by law invested with sufficient authority to guard against the fraudulent arrangements of debtors with the bidders, at the sale of real property seized by authority of Justice; Be it therefore enacted, That whenever it shall appear to the Court out of which any Writ *de Terris* shall have issued, by the return of the Sheriff, or of any other officer of the Court duly authorized to act in such seizure, that the purchaser of real property taken in execution, has neglected to pay the price of his adjudication according to the conditions of the sale, the Court, at the instance of the plaintiff or of the defendant, or of any opposing party, shall order the Sheriff or other officer of the Court, as above mentioned, to proceed anew with the sale of the said real property at the *folle enchère* of the purchaser after notice given in the manner prescribed by law; and shall direct the said Sheriff or such officer of the Court to require every bidder presenting himself at the time of such second sale, before receiving his first bidding, to deposit and pay a sum equal to the amount of the costs then due to the plaintiff for costs of judgment and seizure. Recital. When the purchaser of real property at Sheriff's sale does not pay: Court shall order Sheriff to sell it again: and that every bidder deposit a certain sum before his bidding is received.

XXIV. That if any bidder refuse to pay such sum, such Sheriff or officer of the Court shall go on with the said second sale, starting from the next preceding bidding as if such bidder had not offered any bidding. Otherwise he shall disregard such bidding.

XXV. That in case of a third sale and adjudication in Larger deposit

may be required in case of a third sale.

consequence of the neglect of the second purchaser to deposit the price of his purchase, it shall be lawful for the Court, if thereto required by any interested party, to order such Sheriff or officer of the Court to require every bidder, before bidding, to deposit and pay into his hands a sum equal to one third of the debt due to the plaintiff, including capital, interest and costs; but such sum shall in no case exceed One Hundred Pounds currency.

Plaintiff may authorize Sheriff to receive a bidding without deposit.

XXVI. That when the plaintiff or his Attorney *ad litem*, or any person duly authorized to act on behalf of the plaintiff, shall authorize such Sheriff or officer of the Court either in writing or in the presence of two competent witnesses, whose names such officer shall enter in his return o proceedings, to receive the bidding of a bidder without requiring the deposit of moneys in the cases above mentioned, such Sheriff or officer of the Court shall receive such bidding, and shall proceed to the sale and adjudication of the real property seized, without requiring the deposit and payment of the sums aforesaid or of any sum whatsoever.

If the Plaintiff swear that he believes Defendant will cause property to be adjudged to insolvent persons, deposit may be ordered in first Instance.

XXVII. That if after the issue of the Writ *de terris* and before the first adjudication, the plaintiff or his Attorney in the cause shall declare on oath before one of the Judges of the Court, that he is credibly informed and believes that the defendant, with a view to retard the sale of the real property seized, will cause the real property to be adjudged to insolvent or unknown purchasers, the Court shall have power to order such Sheriff or officer of the Court, who is hereby required to obey such order to require every bidder at the sale of any real property to deposit and pay into his hands a sum equal to that due for costs up to the day of sale before receiving such bidding, unless such Sheriff or officer of the Court shall, at the time of the sale, be authorized by the plaintiff, or by his Attorney, *ad litem*, or by some party duly authorized, to attend to his interests, to receive such bidding without requiring such deposit or payment.

Deposit to be returned to bidders not becoming purchasers, &c.

XXVIII. That such Sheriff or other officer shall, immediately after the adjudication, return to the bidders to whom such property shall not have been adjudged, the moneys deposited by them respectively in virtue of this Act, and the amount deposited by the person to whom the property shall be adjudged shall be considered as part payment of the purchase money.

Fol adjudicataire liable for all damages, and subject to

XXIX. That in every case the *fol enchérisseur et adjudicataire* shall, in addition, be required to pay all other damages and interest accruing to the judgment creditor, and *contrainte par corps* may issue against such bidder

for the recovery of the difference between the amount bid by him and that of the resale on *folle enchère*, without his being entitled to claim any overplus which shall be paid to the other creditors in their order, or in the absence of other creditors, then to the judgment debtor. *contrainte par corps.*

XXX. That such *contrainte par corps* shall be ordered by the Court at the instance of the plaintiff, or of the defendant, or of any opposant not collocated for the full amount of his debt, who shall make it appear by production before the Court of the Record and of the proceedings on the seizure of the real property, that such bidder has not paid in and deposited the purchase money, and that a difference exists between the price of such bidder and that of the second sale; and such *contrainte* shall be ordered and shall last until such pretended bidder shall have paid the amount of such difference, and of all costs incurred in the obtaining of such *contrainte par corps*. How such *contrainte* shall be ordered. Its duration.

XXXI. And whereas much inconvenience, expense and delay arise from the present Rule of Law under which the purchaser of any real property can, in case of eviction or other *trouble*, call only upon his immediate *garant*, who, in his turn, may call upon his *garant*, and so on until the last party responsible be brought into Court—For remedy thereof, Be it enacted, That in any such case it shall be lawful for the purchaser evicted or troubled, to bring his action *en garantie* in the first instance against any party who might under the present Law be eventually brought into Court in the manner aforesaid as *garant*; and in the like manner any person called into Court as *garant* in any such case may call into Court as his *garant* any party who might under the present law be eventually brought into Court as *garant* in such case, in the manner aforesaid; but nothing herein shall prevent any such party aforesaid from suing or calling into Court his immediate *garant* if he think proper so to do. Recital. Any party who might be eventually called into Court as *garant* respecting real property, may be so called in the first instance.

XXXII. And be it declared and enacted, That in the absence of any one of the Judges, who have sat and been present at the hearing of any cause or proceeding argued or hereafter to be argued before the said Superior Court, it is and shall be lawful for the other Judges to pronounce Judgment in such cause or proceeding, provided they constitute a majority of the Judges who heard the same argued, and agree in opinion in relation to such Judgment. Judgment may in certain cases be given in the absence of a Judge who was present at the hearing.

XXXIII. That in all proceedings commenced and carried on in vacation, in virtue of any law now or hereafter to be in force, before any one or more of the Judges of the Superior Court, it is and shall be competent, in case of the illness or absence of any one of the said Judges, for any One judge may continue proceedings commenced in vacation by another.

other Judge of the said Court to sit in the place of the Judge so ill or absent, and to exercise the power and authority which would have been exercised by the Judge so ill or absent, had he continued to sit.

Provision where a cause is heard before two Judges and they differ.

XXXIV. That whenever there exists a difference of opinion between any two of the Judges before whom such proceedings have been commenced and carried on, the said Judges have and shall continue to have a right to order that the cause be argued before them and one other Judge of the said Court.

Acton and part of Upton annexed to County of St. Hyacinthe.

XXXV. And be it enacted, That from and after the passing of this Act, the Township of Acton and so much of the Township of Upton not comprised within the first, second, third, fourth, fifth, sixth, seventh and eight ranges thereof, in the County of Drummond, in the District of Three-Rivers, shall be annexed to and included within the County of St. Hyacinthe, for Judicial, Municipal and all other purposes, as if the said Township and part of Township had always formed part of the said County, and shall form part of the Circuit of St. Hyacinthe.

Commencement of Act.

XXXVI. That this Act shall, except in so far as is otherwise specially provided for, come into force on the first day of August next.

SCHEDULE A.

Times at which the Terms of the Superior Court shall be holden in the Districts of Quebec and Montreal.

At the City of Quebec, in and for the District of Quebec, from the first to the fifth, both days included, of the months of February, March, April, May, September, October and December, and from the twentieth to the twenty-fifth, both days included, of the months of June and November, in each and every year.

At the City of Montreal, in and for the District of Montreal, from the seventeenth to the twenty-seventh both days included, of each of the months of February, March, April, May, June, September, October, November and December, in each year.

SCHEDULE B.

Times at which the terms of the Circuit Court shall be holden in the Quebec and Montreal Circuits.

At the City of Quebec, in and for the Quebec Circuit, from the twenjieth to the twenty-fifth, both days included, of the months of January, February, March, April May, June, September, October, November and December, of each and every year.

At the City of Montreal, in and for the Montreal Circuit, from the tenth to the fifteenth, both days included, of each of the months of February, March, April, May, June, September, October, November and December, of each year.

CAP. CXCV.

An Act to amend the Lower Canada Judicature Act, and to provide for the service of Circuit Court Writs by Bailiffs in certain cases.

[*Assented to, 14th June*, 1853.]

Preamble. WHEREAS it is expedient and necessary to amend certain Sections of the Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act to amend the Laws relative to the Courts of original Civil Jurisdiction in Lower Canada*, and to provide an easy and less expensive mode of effecting the service of Writs of Summons and Writs of Execution *de bonis* issuing from the Circuit Court created by the said Act; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the fiftieth Section of the Act first above cited, shall be and is hereby amended in such a manner as to permit all Writs of Summons *ad respondendum* issuing from the said Circuit Court in all cases cognizable therein, and when by law such Writ may be executed in any District other than the District in which the same shall have issued, to be, at the option and choice of the Plaintiff or Plaintiffs in such cases, addressed either to the Sheriff of such other District or to any Bailiff of the Superior Court in such other District, to be by such officer executed and returned into the Circuit Court at the place where the same shall have issued, according to the exigency of such Writ and to law, and such Writ so returned shall be received and the Certificate of due service or execution shall be authentic as in ordinary cases.

12 V. c. 38.

Writ of Summons to be served in another District may be addressed to the Sheriff thereof, or to a Bailiff therein, at the option of the Plaintiff.

II. And be it enacted, That in any case in the said Circuit Court when any Writ of Summons shall require to be executed in two or more Districts, the next preceding Section may apply and regulate the proceedings, and as many original Writs of Summons may issue as there may be Districts in which the same are to be executed, and

Preceding section to apply where the Writ is to be served in more than one District.

the ninety-third Section of the Act herein first above cited, shall be so interpreted as to give full and ample effect to this Section of the present Act.

Alias Writ of execution *de bonis* to be executed in another District, may be addressed to a Bailiff.

III. And be it enacted, That the seventy-first Section of the Act herein first above cited, shall be and is hereby so amended as to permit *alias* Writs of Execution *de bonis* issuing from the said Circuit Court, and requiring to be executed in any District other than the District in which the same shall have issued, to be, at the option and choice of the Plaintiff or Plaintiffs in such cases, addressed either to the Sheriff of such other District or to any Bailiff of the Superior Court in such other District, to be by such officer duly executed and returned into the Circuit Court at the place where the same shall have issued, and the said Court shall be bound to receive the return of service and execution as in other cases.

Duty of the Bailiff to whom any such Writ shall be addressed.

IV. And be it enacted, That, in all cases wherein such Writs of Summons or of execution *de bonis* shall be so addressed to a Bailiff of the Superior Court in such District other than the District in which the same shall have issued, it shall be the duty of such Bailiff in whose hands such Writ shall be placed forthwith to execute and duly return the same into the Circuit Court at the place where the same shall have so issued.

Punishment of Bailiff neglecting his duty as to any such Writ.

V. And be it enacted, That any such Bailiff who shall neglect or refuse duly to execute and return in accordance with the provisions of this Act, any such Writ so entrusted to him, or who shall improperly execute or return any such Writ of Summons or Writ of Execution, shall be liable in damages at the suit of the Plaintiff or Plaintiffs or other interested person or persons, as in ordinary cases, for all injury or loss sustained by such neglect or refusal, or by such improper execution or return of any such Writ, and the sureties of such Bailiff shall be holden as in other cases according to law.

Liability of Bailiff for moneys levied under any such Writ.

VI. And be it enacted, That in any case wherein under any Writ of Execution so as aforesaid issued and addressed to any Bailiff, such Bailiff shall have levied the amount of the said Writ of Execution or any part thereof, such Bailiff shall be held responsible for the due payment thereof to the Plaintiff or Plaintiffs, or into the Court from which the Writ issued in any such cause, and shall be *contraignable* for the same by the ordinary course of law, and by the order of the Circuit Court at the place where such Writ of Execution shall have issued.